VOL.

I

[redacted]

No. 27

VOLUME I

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,457

ELSA W de WAGENKNECHT and
N. V. EDMUND WAGENKNECHT'S
HANDEL MAATSCHAPPIJ,

Appellants,

v.

MRS. HUGO STINNES, SR., also known
as Mrs. Claere Hugo Stinnes,
Mrs. Clare Wagenknecht Stinnes and
Clare Hugo Stinnes-Wagenknecht,

Appellee.

No. 13,458

MRS. HUGO STINNES, SR., also known
as Mrs. Claere Hugo Stinnes,
Mrs. Clare Wagenknecht Stinnes and
Clare Hugo Stinnes-Wagenknecht,

Appellant,

v.

ELSA W. de WAGENKNECHT and
N. V. EDMUND WAGENKNECHT'S
HANDEL MAATSCHAPPIJ,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAGES 1 THROUGH 250

Robert I. Thiel, Printer
Washington, D. C.
EX 3-0625

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JOINT APPENDIX

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JOINT APPENDIX

PLEADINGS AND DOCUMENTARY EVIDENCE

136 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE PETITION OF	)	
MRS. HUGO STINNES, SR., also known as MRS. CLAERE HUGO STINNES, MRS. CLARE WAGENKNECHT STINNES, and CLARE HUGO STINNES-WAGENKNECHT,	)	
Petitioner,	)	No. 2158-55
ADDRESS: Grossenbaumstr. 253 Mulheim-Ruhr, Germany,	)	
TO PERPETUATE HER OWN TESTIMONY.	)	

[Filed May 13, 1955]

PETITION UNDER RULE 27 OF THE FEDERAL RULES OF CIVIL PROCEDURE

The petitioner, MRS. HUGO STINNES, SR., also known as Mrs. Claere Hugo Stinnes, Mrs. Clare Wagenknecht Stinnes, and Clare Hugo Stinnes-Wagenknecht, by her attorneys, PEHLE, LESSER, MANN, RIEMER & LUXFORD, respectfully shows and alleges upon information and belief:

1. Petitioner is a citizen of Germany and of Uruguay and resides at Grossenbaumstrasse, 253, Mulheim-Ruhr, Federal Republic of Germany.

2. Petitioner expects that she will be a party, or that her successors, executors or administrators, will be parties to one or more actions or other proceedings which are or may be cognizable in a court of the United States, but is presently unable to bring such actions or to institute such proceedings, or to cause the same to be brought or instituted, for the reasons hereinafter set forth.

3. Petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr. By Vesting Orders Nos. 84, 197, 2080, 2170, 6641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268 and 19307, issued

under authority of the Trading with the Enemy Act, as amended, at various times between July 30, 1942, and April 15, 1953, the Attorney General of the United States, as successor to the authority, rights, privileges, powers, duties and functions of the Office of Alien Property Custodian and the Alien Property Custodian as provided in Executive Order No 9788, 11 F R
137 11981, and the Alien Property Custodian, vested and seized the properties therein described as being the property of the petitioner, or of the petitioner and others therein named or of others therein named

4 On the several dates of the vesting of such properties, petitioner as the residuary legatee of Hugo Stinnes, Sr , as aforesaid and otherwise, was directly or indirectly the beneficial owner of all or substantially all of the properties so vested On February 7, 1955, petitioner filed with the Attorney General of the United States, a notice of claim with respect to the properties so vested on the form duly prescribed by him for such notices of claim

5 Notices of claim with respect to certain of the properties so vested have also been filed with the Attorney General of the United States on forms duly prescribed by him for such notices of claim by: Elsa Wichtendahl de Wagenknecht, also known as Elsa W de Wagenknecht, individually and as executrix and sole heir of Don Edmundo Wagenknecht; by N V Edmund Wagenknecht's Handelmaatschappij; by Atlantic Assets Corporation; and by said Elsa Wichtendahl de Wagenknecht, also known as Elsa W de Wagenknecht, allegedly as stockholders of, and on behalf of Lantica Trading Co , Ltd and Union Trading and Financing Co

6 Petitioner has been advised it does not appear that she is eligible for a return of vested property under Section 32 of the Trading with the Enemy Act, as amended, and that she does not qualify to be a plaintiff in an action under Section 9(a) of such Act against the Attorney General of the United States for the return of such vested property

7 There is now pending in the Senate of the United States a bill, No S 995, introduced by Senator Kilgore, Chairman of the Senate Committee on the Judiciary, to amend the Trading with the Enemy Act by adding thereto, among others, a Section 40(a) in pertinent part as follows

8 "Any property or interest vested * * * pursuant to the provisions of this Act after December 7, 1941 * * * shall as a matter of grace, be returned in its state as of the date of enactment of this section (that is, in kind or as liquidated proceeds), to the natural person, firm, trust, association, or corporation who or which was the owner thereof at the time of such vesting * * *. In determining the 'owner', the record holding or title ownership as the case may be, of such property at the time of vesting shall be conclusive and delivery, transfer, conveyance, or payment to such owner * * * shall operate to discharge the United States from plural liability in respect of the return provided for hereunder * * *"

and a Section 40(e), providing as follows:

"No return hereunder shall bar the prosecution of any suit at law or in equity against a person to whom return has been made, to establish any right, title or interest, which may exist or which may have existed at the time of vesting, in or to the property or interest returned. With respect to any such suit, the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian, his successor or successors, shall not be included for the purpose of determining the application of any statute of limitations."

Many of the properties of petitioner, vested as aforesaid, were not on the respective dates of their vesting, recorded in petitioner's name.

8. Section 9(a) of the Trading with the Enemy Act, as amended, in pertinent part provides:

"Any person not an enemy * * * claiming any interest, right or title in any * * * property which may have been * * * transferred * * * to the Alien Property Custodian or seized by him hereunder * * * may file with the said custodian a notice of his claim * * * in such form * * * as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the * * * transfer * * * to said claimant of the * * * property so held by the Alien Property Custodian * * *, or of the interest therein to which

the President shall determine said claimant is entitled. Provided, that no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property * * *"

9. Accordingly, if the properties vested as aforesaid should be returned by the Attorney General of the United States to any of the persons, firms or corporations mentioned in paragraph "5" hereof, the petitioner
139 expects to bring one or more actions against the persons, firms or corporations to whom such return is made to establish her right, title and interest thereto and to recover the same, and the subject matter of petitioner's expected actions will be the unlawful withholding from her of said properties.

10. The facts which petitioner desires to establish by the proposed testimony are as follows:

(a) that petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr.;

(b) that all or substantially all of the properties vested as aforesaid were included in the residuary estate of said Hugo Stinnes, Sr., were the proceeds or increment of such property, or were otherwise directly or indirectly beneficially owned by the petitioner on the dates of the vesting thereof.

11. The names of the persons, firms and corporations whom petitioner expects will be the adverse parties, and their addresses, are

Honorable Herbert Brownell, Jr.,
Attorney General of the United States,
or his successor in office,
Department of Justice
Washington 25, D. C.

Elsa Wichtendahl de Wagenknecht, individually,
as executrix and sole heir of Don Edmundo
Wagenknecht, as alleged stockholder of, and
claimant on behalf of Lantica Trading Co., Ltd.
and as alleged stockholder of and claimant on
behalf of Union Trading and Financing Company,
Cuernavaca, Morelos, Mexico
c/o Ralph G. Albrecht, Esq.
501 Fifth Avenue
New York, New York

N. V. Edmund Wagenknecht's Handelmaatschappij
Amsterdam, The Netherlands
c/o Ralph G. Albrecht, Esq.
501 Fifth Avenue
New York, New York

Atlantic Assets Corporation
c/o Office of Alien Property
Department of Justice
Washington 25, D. C.

140 12. Petitioner's reasons for desiring to perpetuate her own testimony are that: She is over eighty-two years of age, having been born on November 26, 1872, and her health is frail. Accordingly, petitioner is fearful that she may not be available to testify on her own behalf upon the trials of the expected actions, and that if her testimony is not perpetuated, evidence of facts which are peculiarly within her knowledge will not be available on her behalf or on behalf of her successors, executors or administrators.

WHEREFORE, your petitoner prays for an Order authorizing the taking of the deposition of petitioner upon oral examination for the purpose of perpetuating her testimony.

PEHLE, LESSER, MANN, RIEMER & LUXFORD

By /s/ John W. Pehle
A Member of the Firm
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for the Petitioner

VERIFICATION

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss:

John W. Pehle, being duly sworn, deposes and says that he is an attorney and counsellor-at-law duly admitted to practice before the Court, and a member of Pehle, Lesser, Mann, Riemer & Luxford, attorneys for the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true; that the reason why this verification is made by deponent and not by the petitioner is that petitioner

resides in Mulheim-Ruhr, Federal Republic of Germany and is not presently within the District of Columbia or elsewhere in the United States;

141 and that the sources of deponent's knowledge and information are the public files of the Office of Alien Property, Department of Justice, correspondence with petitioner's attorneys in Germany and conferences with certain of petitioner's sons

/s/ John W Pehle

Sworn to before me this 12th day of May, 1955.

/s/ Lorraine D Bosich
Notary Public

My Commission Expires June 14, 1958

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157 [Filed June 13, 1955]

ORDER

This matter having come on to be heard on June 8, 1955, upon the petition herein and the application of the petitioner for the Order described in the petition; and Herbert Brownell, Jr., Attorney General of the United States, and Atlantic Assets Corporation, named in the petition herein as expected adverse parties having appeared by counsel and consented to the granting of the Order described in the petition; and it appearing that service of the petition herein and notice of the application for the Order therein described on Elsa Wichtendahl de Wagenknecht, of Cuernavaca, Morelos, Mexico, individually, as executrix and sole heir of Don Edmundo Wagenknecht, as alleged stockholder of, and claimant on behalf of Lantica Trading Co., Ltd and as alleged stockholder of, and claimant on behalf of Union Trading and Financing Company, and on N V. Edmund Wagenknecht's Handelmaatschappij, of Heerengracht 256, Amsterdam, The Netherlands, also named in the petition herein as expected adverse parties, was sought to be had by delivering copies of the same personally to Ralph G. Albrecht, Esq., of 501 Fifth Avenue, New York, New York, and not otherwise; and said Ralph G Albrecht, Esq., having appeared on his own behalf and,

called as a witness by the Court, having testified that although he is attorney for said Elsa Wichtendahl de Vagenknecht and said N. V. Edmund Wagenknecht's Handelmaatschappij in connection with certain matters, he is without authority to accept such service on behalf of either of them; and

158 Counsel for the petitioner having in the premises applied in open Court for an Order pursuant to Rule 27 (a) (2) of the Federal Rules of Civil Procedure authorizing the service of the petition herein and notice of petitioner's application for the Order therein described on said Elsa Wichtendahl de Wagenknecht and said N. V. Edmund Wagenknecht's Handelmaatschappij in a manner other than as provided in Rule 4 (d) of the Federal Rules of Civil Procedure for service of summons upon the ground that service in such manner cannot with due diligence be made upon them; and counsel for the said Herbert Brownell, Jr., Attorney General of the United States, and said Atlantic Assets Corporation, having consented to the granting of such application; and said Ralph G. Albrecht, Esq., having testified that said Elsa Wichtendahl de Wagenknecht is an alien residing outside the United States, that said N. V. Edmund Wagenknecht's Handelmaatschcappij is a foreign corporation not within the United States, and that Hans Carl von Linsingen, whose addresses are Postfach 68, Basel, Switzerland, and Dufourstrasse 42, Basel, Switzerland is attorney-in-fact for said Elsa Wichtendahl de Wagenknecht, duly empowered to act on her behalf and duly authorized to accept service on her behalf of the petition herein and notice of application for the Order therein described;

UPON CONSIDERATION WHEREOF, it is this 13 day of June, 1955, ORDERED that:

1 Service of the petition herein and notice that the petitioner will apply to the Court for the Order therein described on a specified date upon Elsa Wichtendahl de Wagenknecht, of Cuernavaca, Morelos, Mexico, individually, as executrix and sole heir of Don Edmundo Wagenknecht, as alleged stockholder of, and claimant on
159 behalf of Lantica Trading Co., Ltd and as alleged stockholder of, and claimant on behalf of Union Trading and Financing Company, may be effected by sending copies thereof by prepaid registered

mail, return receipt requested, addressed to, or by delivering copies thereof personally to H. C. von Linsingen, Postfach 68, Basel, Switzerland, and Dufourstrasse 42, Basel, Switzerland;

2 - Service of the petition herein and notice that the petitioner will apply to the Court for the Order therein described on a specified date upon N. V. Edmund Wagenknecht's Handelmaatschappij may be effected by sending copies thereof by prepaid registered mail, return receipt requested, addressed to, or by delivering copies thereof personally to said N. V. Edmund Wagenknecht's Handelmaatschappij, Heerengracht 256, Amsterdam, The Netherlands; and

3 Subject to the provisions of Rule 4(b) of the Rules of this Court, Ralph G. Albrecht, Esq., of 501 Fifth Avenue, New York, New York, is hereby appointed as attorney to represent said Elsa Wichtendahl de Wagenknecht and said N. V. Edmund Wagenknecht's Handelmaatschappij herein within the meaning of Rule 27 (a) (2) of the Federal Rules of Civil Procedure.

/s/ _____
United States District Judge

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162 [Filed July 11, 1955]

ORDER

Upon the petition herein, duly verified May 12, 1955, for an Order pursuant to Rule 27 of the Federal Rules of Civil Procedure authorizing the taking of the deposition of the petitioner upon oral examination for the purpose of perpetuating her testimony, petitioner's notice herein of application for the Order described in the petition returnable July 11, 1955, the subscribed consent of the petitioner and all expected adverse parties named in the petition, by their respective attorneys, and upon all of the proceedings had heretofore herein, and

The Court being satisfied that the perpetuation of petitioner's testimony may prevent a failure of justice, it is, this 11th day of July, 1955,

ORDERED that the petition be, and it hereby is in all respects granted, and that the petitioner be, and she hereby is authorized to take her own deposition upon oral examination for the purpose of perpetuating her testimony with respect to the facts she desires to establish, to wit:

(a) That petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr., and

(b) That all or substantially all of the properties vested in the Attorney General of the United States, as successor to the Alien
163 Property Custodian, under Vesting Orders Nos. 84, 197, 2080, 2170, 9641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268 and 19307, were included in the residuary estate of said Hugo Stinnes, Sr., were the proceeds or increment of such property, or were otherwise directly or indirectly beneficially owned by the petitioner on the dates of the vesting thereof; and it is

FURTHER ORDERED that the petitioner's said deposition be taken at the American Consulate General, Cecilienallee, Dusseldorf, Federal Republic of Germany, before an American Consular officer or other person duly designated in Rule 28 of the Federal Rules of Civil Procedure, that the taking thereof commence on August 15, 1955, at 10:30 o'clock in the forenoon of that day, or at such other time or place as may be unanimously agreed upon by the attorneys for the petitioner and the expected adverse parties named in the petition, and shall continue from day to day until completed, provided, however, that in view of petitioner's age and the state of her health, the taking of her deposition may be recessed from time to time as may appear necessary or appropriate to said attorneys; and petitioner is hereby directed to appear at such place and at such time and times and give her deposition; and it is

FURTHER ORDERED that the examination of petitioner upon the taking of her deposition shall be conducted by counsel in the following order:

(a) Attorney for petitioner,

(b) Attorney for the Attorney General and Atlantic Assets Corporation, and

(c) Attorney for Mrs Elsa W. de Wagenknecht and N V. Edmund Wagenknecht's Handelmaatschappij,

and shall continue in such rotation until the examination has been completed; and it is

164 FURTHER ORDERED that upon completion of petitioner's deposition, the same shall be transcribed and submitted to petitioner for her signature, certified, as provided in Rule 30 of the Federal Rules of Civil Procedure, and shall thereupon be transmitted by registered mail to the Clerk of this Court and filed with the records of this proceeding; and such deposition so certified, if completed, or any part thereof, shall be receivable in evidence on the offer of petitioner, her heirs, executors, administrators or assigns, or any expected adverse party or parties named in the petition or their heirs, executors, administrators, assigns, successors in office or successors in interest, in any civil action in any court of the United States between them or any of them, the subject matter of which is the beneficial ownership, direct or indirect, on the dates of the vesting thereof, of any of the properties vested by the Alien Property Custodian, the Office of Alien Property Custodian and the Attorney General of the United States under Vesting Orders Nos. 84, 197, 2080, 6641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268, and 19307 Any and all objections with respect to materiality, relevancy or competency shall be reserved for the trial in which it is sought to offer said deposition or any part thereof, except that any objections as to form shall be deemed waived unless noted upon the taking of the deposition; and it is

FURTHER ORDERED that the petitioner furnish a copy of the transcript of her testimony upon such deposition gratis to the attorneys for the named adverse parties, bear all expenses incurred in connection with the taking of her deposition hereunder, including the employment of stenographers, typists and interpreters necessary to the taking of her deposition, and shall pay such fees, if any, as may be due to the American Consular officer or other person before whom her deposition is taken; and it is

165 FURTHER ORDERED that the travel and per diem expenses of the Attorney General of the United States incurred in connection with the taking

of petitioner's deposition pursuant to this Order be deemed conservatory expenses within the meaning of Section 32 (g) of the Trading With the Enemy Act, as amended, and together with such other amounts as are authorized by law, may be charged by the Attorney General of the United States as such against any property or interest or proceeds thereof which he may return to petitioner; and it is

FURTHER ORDERED that the petitioner shall pay to Ralph G. Albrecht, attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, a reasonable attorney's fee for his services in connection with the taking of petitioner's deposition pursuant to this Order, and all reasonable expenses incurred by him in travel between New York and Dusseldorff (and return) and for board and lodging in Dusseldorff incurred in connection with the taking of such deposition, and that upon completion of the taking of petitioner's deposition the Court will, upon application and notice, (a) determine the amount of the travel and other expenses incurred by said attorney for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, to be paid by petitioner, and (b) determine the amount of said attorney's fee to be paid by petitioner to said attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij Said fees shall be computed on the basis of the time necessarily spent by said attorney in traveling to and from the place of the taking of petitioner's deposition in connection therewith, and attending the taking of said deposition; and it is

FURTHER ORDERED that this Order shall be null and void and of no force and effect unless on or before August 2, 1955, there is advanced by or on behalf of petitioner to the said attorney for Elsa W. de Wagen-
166 knecht and N. V. Edmund Wagenknecht's Handelmaatschappij the sum of One Thousand Dollars ($1,000.00) against his fees and expenses, to be accounted for by him upon the proceeding hereinabove provided for the determination of the amount of his fees and expenses to be paid by petitioner and, there is posted by petitioner (a non-resident of the United States) on or before the same date with the Clerk of this Court the sum of $4,000 or the undertaking of an approved surety in that amount, to secure

to said attorney the payment of his fees and expenses, the amount of said security not to be considered in the determination of the fees and expenses to be paid said attorney by petitioner; and it is

FURTHER ORDERED that on Monday of each week during which the taking of petitioner's deposition continues there shall be advanced by or on behalf of petitioner to said attorney for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij the sum of Two Hundred Fifty Dollars ($250.00) or the equivalent thereof in local currency of the place where petitioner's deposition is taken, against his fees and expenses, to be accounted for by him upon the proceeding hereinabove provided for the determination of the amount of his fees and expenses to be paid by petitioner.

/s/ Jas. W. Morrison
United States District Judge

Consented to:

Pehle, Lesser, Mann, Riemer & Luxford
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By /s/ James H. Mann
A Member of the Firm

Robert J. Wieferich, Attorney
Department of Justice
Washington 25, D. C.
Attorney for Herbert Brownell, Jr.,
Attorney General of the United States,
and Atlantic Assets Corporation.

By /s/ Robert J. Wieferich

Ralph G. Albrecht, Attorney and
Attorney by Appointment of the Court, and
Henry F. Butler, Attorney
for Elsa W. de Wagenknecht and N. V.
Edmund Wagenknecht's Handelmaatschappij,
c/o Henry F. Butler, Esq.
1511 K Street, N. W.
Washington 5, D. C.

By /s/ Ralph G. Albrecht

167 [Received July 29, 1955]

PEHLE, LESSER, MANN, RIEMER & LUXFORD

1210 Eighteenth Street, N. W.
Washington 6, D. C.

July 29, 1955

Harry M. Hull, Clerk
United States District Court
for the District of Columbia
Washington 1, D. C.

Re: Civil Action No. 2158-55
Petition of Mrs. Hugo Stinnes, Sr. to Perpetuate Her Own Testimony

Dear Mr. Hull:

Transmitted herewith is a Treasurer's check, drawn by the American Security and Trust Company, payable to you in the sum of $4,000.00, which amount the above petitioner is required to post with you on or before August 2, 1955, by the terms of Judge Morris' Order in the above matter dated July 11, 1955.

Very truly yours,

PEHLE, LESSER, MANN, RIEMER & LUXFORD

By /s/ James H. Mann

Enclosure

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168 [Filed September 21, 1955]

MOTION TO REQUIRE PETITIONER TO DEPOSIT WITH THE CLERK OF THE COURT ADDITIONAL SECURITY FOR THE PAYMENT OF THE FEES AND EXPENSES OF THE COURT APPOINTED ATTORNEY

Comes now Ralph G. Albrecht, the attorney appointed by the Court to represent Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij (as expected adverse parties) in the taking of petitioner's deposition and, for the reasons set forth in the affidavit attached hereto in support of this motion, moves this Court to order the

petitioner to deposit immediately an additional $4,000 or an undertaking of an approved surety in that amount, to secure to the Court appointed attorney the payment of his fees and expenses in this proceeding to be hereafter fixed by the Court and, for the same purpose, to order the petitioner to deposit on October 17th, 1955, another $4,000 or another undertaking of an approved surety in that amount, in the event that the taking of the deposition should be further protracted beyond October 15, 1955.

/s/ Henry F. Butler

Henry F. Butler
1039 Investment Building
Washington 5, D. C.
Local Counsel for
Expected Adverse Parties

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178 [Filed September 26, 1955]

OPPOSITION TO MOTION FOR FURTHER SECURITY AND MOTION FOR AN ORDER UNDER RULES 27 AND 30 (d) OF THE FEDERAL RULES OF CIVIL PROCEDURE

The petitioner opposes the motion herein of Ralph G. Albrecht, Esq., served the 20th day of September, 1955, for an Order requiring petitioner to furnish additional security for the payment of his fees and expenses, and submits in opposition thereto the attached affidavit of John W. Pehle, Esq., sworn to the 26th day of September, 1955; and

On the petition herein, filed May 13, 1955, the Orders herein duly entered June 13, 1955, and July 11, 1955, the affidavit of Gerald J. Mc Mahon, sworn to the 19th day of September, 1955, submitted in support of the said motion of said Ralph G. Albrecht, Esq., the attached affidavit of John W. Pehle, Esq., sworn to the 26th day of September, 1955, and all of the proceedings had heretofore herein, the petitioner hereby moves for an Order, pursuant to Rules 27 and 30 (d) of the Federal Rules of Civil Procedure, directing the officer conducting the examination herein of petitioner to cease forthwith from taking said deposition or to cease from taking said deposition after the passage of such further time as may appear reasonable to the Court in the premises, upon the ground that cross-

examination of petitioner by said Ralph G. Albrecht, Esq. is being conducted in such manner as unreasonably to oppress the petitioner.

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PEHLE, LESSER, MANN, RIEMER
& LUXFORD
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for the Petitioner

By: /s/ Lawrence S. Lesser
A Member of the Firm

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180 [Filed September 26, 1955]

AFFIDAVIT

CITY OF WASHINGTON)
ss:
DISTRICT OF COLUMBIA)

JOHN W. PEHLE, being duly sworn, deposes and says:

I am an attorney and counsellor at law duly admitted to practice before this Court, and I am a member of Pehle, Lesser, Mann, Riemer & Luxford, attorneys for the petitioner herein, whose offices are at 1210 Eighteenth Street, N. W., Washington 6, D. C. I make this affidavit in opposition to the motion made herein by Henry F. Butler, Esq. on behalf of Ralph G. Albrecht, Esq. attorney for certain expected adverse parties named in the petition herein, for an Order requiring petitioner to furnish additional security for the payment of Mr. Albrecht's fees and expenses in connection with the taking of petitioner's deposition herein, and in support of petitioner's motion for a termination Order under Rules 27 and 30 (d) of the Federal Rules of Civil Procedure with respect to such deposition.

I

THE NATURE AND BACKGROUND OF THE PROCEEDING

This is a proceeding instituted under Rule 27 of the Federal Rules of Civil Procedure to perpetuate the petitioner's own testimony with respect to her ownership of certain property on the dates of the vesting thereof under the Trading with the Enemy Act. Petitioner is the eighty-three year old widow of the late Hugo Stinnes, Sr., the well-known German industri-

alist who died in 1924. By the terms of said Hugo Stinnes' will, the peti-
181 tioner was sole legatee of his vast interests, and she claims such ownership, directly and indirectly, by reason of such inheritance.

Prior to the institution of this proceeding in May, 1955, Mrs. Elsa W. de Wagenknecht, widow of petitioner's brother, individually, as executrix and sole heir of Don Edmundo Wagenknecht (her late husband) and as a stockholder of, and on behalf of Lantica Trading Co., Ltd., and Union Trading and Financing Co., had filed notices of claim with the Attorney General claiming ownership of certain of such vested property on the dates of the vesting hereof, and seeking a "return" thereof pursuant to the Trading with the Enemy Act, as amended. Similar notices of claim with respect to certain of said vested property had also previously been filed by N. V. Edmund Wagenknecht's Handelmaatschappij and Atlantic Assets Corporation. In February, 1955, after the filing of such notices of claim, but prior to the institution of this proceeding, the petitioner filed a notice of claim with the Attorney General claiming ownership on the dates of vesting, and seeking the return of substantially all of the property vested by such vesting orders, not excluding the property claimed as aforesaid by Mrs. Wagenknecht in her several capacities, N. V. Edmund Wagenknecht's Handelmaatschappij and Atlantic Assets Corporation.

II

MR. ALBRECHT'S APPOINTMENT BY THE COURT AS ATTORNEY FOR MRS. WAGENKNECHT AND N. V. EDMUND WAGENKNECHT'S HANDELMAATSCHAPPIJ, EXPECTED ADVERSE PARTIES NAMED HEREIN

In their said claims proceedings, Mrs. Wagenknecht, in her several capacities, and N. V. Edmund Wagenknecht's Handelmaatschappij were at the time of the institution of this proceeding, and continue to be, represented by said Ralph G. Albrecht, Esq., who is a New York lawyer (not a member of the bar of this Court) with offices at 501 Fifth Avenue, New York City, New York. At the same time Mr. Albrecht (in association
182 with Henry F. Butler, Esq., of the District of Columbia Bar, whom he has also associated in this proceeding) also represented and he continues to represent Mrs. Wagenknecht in two civil actions in this Court, Nos.

1734-52 and 4920-52, instituted in 1952 by her (and, as to the latter, others) against the Attorney General of the United States for the return of vested property. On August 13, 1954, which was prior to both the filing of petitioner's aforementioned notice of claim with the Attorney General and the institution of this proceeding, consent Orders were entered in such actions, to which petitioner has at no time been a party, authorizing the taking in Europe of petitioner's deposition therein. I am informed that prior thereto, and in or about July, 1953, efforts had been made in connection with such litigation to examine the petitioner abroad, but with no success. Subsequent efforts in or about September, 1954, to examine her abroad in such litigation, were apparently equally unavailing. Mrs. Wagenknecht resides in Mexico, and N. V. Edmund Wagenknecht's Handelmaatschappij is a Dutch corporation having its only offices in the Netherlands.

In view of the foregoing, when this proceeding was instituted to perpetuate the testimony of petitioner with respect to her ownership on the vesting dates of the aforementioned vested property, my firm, as attorneys for the petitioner, caused the petition, which names Mrs. Wagenknecht and the Dutch corporation among the expected adverse parties, and the notice of hearing thereon, to be served on said Ralph G. Albrecht, Esq., in the belief that in the circumstances he either had or could easily secure his clients' authority to accept such service on their behalf. However, we were mistaken, for on the return date, Mr. Albrecht appeared before Judge Curran and testified that notwithstanding his representation of Mrs. Wagenknecht and the Dutch corporation in the aforementioned

183 claims proceedings and litigation, and the efforts made in connection with the latter to examine petitioner, he was not authorized by his clients to accept service on their behalf. In this posture of things, it was clear that service in the manner prescribed in Rule 4 (d) could not be had with due diligence, and that in consequence the Court could, under Rule 27, "make such order as is just for service by publication or otherwise". Rule 27, however, provides that in such case the Court "shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney

who shall represent them, and in case they are not otherwise represented, shall cross-examine the deponent". Thus, after hearing Mr. Albrecht testify that he was not authorized to accept service for his clients, Judge Curran said to him from the bench:

> "THE COURT: Of course, the rules provide that if such service cannot be had with due diligence, the Court may make such order as is just for publication or otherwise and shall appoint for persons not served in the manner provided in Rule 4 (d) an attorney who shall represent them.
>
> "I take it you don't want me to appoint another attorney to represent the two that you represent."

Mr. Albrecht replied: "No, sir."

Accordingly, we were instructed by Judge Curran as follows:

> "THE COURT: Very well. You draw an order wherein the Court, because service cannot be made with due diligence in this case upon the two expected adverse parties that have been named in the petition, will direct that service be made by registered mail to their addresses in Mexico and Holland; and I will appoint Mr. Albrecht as counsel to represent the two adverse parties that we have been discussing * * * "

In consequence, we prepared and Judge Curran in due course signed the Order herein of June 13, 1955, which, after reciting the attempted service on Mr. Albrecht and the substance of his testimony, authorized service on Mr. Albrecht's clients by registered mail and personal delivery abroad, and appointed Mr. Albrecht as his clients' attorney in this proceeding "within the meaning of Rule 27 (a) (2) of the Federal Rules of Civil Procedure".

184 Under these circumstances, while technically true, the reference in Mr. Butler's motion to Ralph G. Albrecht as "the attorney appointed by the Court to represent Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij" and the similar and repeated references in paragraphs 1, 2, 3, 12 and 13 (and perhaps elsewhere) of Mr. McMahon's affidavit in support of such motion, necessarily give a com-

pletely erroneous impression of Mr. Albrecht's role in this matter. This is borne out by a letter which was addressed jointly to Mr. Albrecht and us by Hon. Dallas S. Townsend, Assistant Attorney General and Director of the Office of Alien Property, under date of June 29, 1955, which points up the inextricable oneness of this proceeding and the aforementioned Wagenknecht claims and litigation, in which Mr. Albrecht has represented (without benefit of court appointment) Mrs. Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij since long prior to the institution of this proceeding. Mr. Townsend wrote:

"We have been served with notice that on July 11, 1955 Mrs. Hugo Stinnes, Sr., will apply to the United States District Court for the District of Columbia for an order authorizing the taking of her own deposition upon oral examination for the purpose of perpetuating her testimony As you recall, at the previous hearing before Judge Curran on June 8, 1955 in this matter the Attorney General of the United States appeared and consented to an order for the perpetuation of petitioner's testimony provided that it could be done on or about July 1, 1955 and petitioner would undertake to make herself available at a specific place on that date. Obviously, it is impossible now to adhere to that schedule and we, therefore, take this opportunity of giving all parties in interest our views in advance of the hearing of July 11, which views we shall communicate to the Court at that time.

"In connection with our vesting of the Stinnes properties we presently have pending in the District Court in this jurisdiction two suits against the Attorney General of the United States as successor to the Alien Property Custodian brought by Mrs. Wagenknecht and and certain co-plaintiffs seeking the return of approximately $1,200,000 An offer of settlement has been made by the plaintiff in those actions and the Attorney General of the United States notified
185 the plaintiff that such offer could only be acted upon after the deposition of Mrs Stinnes was taken and reviewed Chief Judge Laws was informed of this at the pre-trial hearing in these cases in February of this year and stated that the parties would be given until October

to take the deposition and accept or reject the offer of settlement -- otherwise the cases would be set for trial in October.

"In addition, both Mrs. Wagenknecht and Mrs. Stinnes have filed a number of administrative claims for the return of vested property and with respect to the majority common stock of Hugo Stinnes Corporation which has a present market value of approximately $15,000,000 these claims of Mrs. Wagenknecht and Mrs. Stinnes appear to be in conflict. As you know, counsel for the Attorney General attempted to take the deposition of Mrs. Stinnes in the pending litigation in Europe in 1953 and in 1954 but on neither occasion was Mrs. Stinnes available. After the Attorney General's decision to require the testimony of Mrs. Stinnes before evaluating the offer of settlement all parties in interest were informed of his desire to take the deposition immediately and, in fact, a tentative date of April 20, 1955 was fixed. On April 1, 1955, however, counsel for Mrs. Stinnes received a cable from her stating that she was unable to testify because of illness and suggesting that it be delayed until July; at the same time counsel for Mrs. Wagenknecht refused to stipulate to the proposed petition to perpetuate Mrs. Stinnes' testimony. Thereafter the pending proceeding to perpetuate Mrs. Stinnes' testimony was begun and counsel for Mrs. Wagenknecht has objected both to the service of process and also to the jurisdiction of the Court. It is apparent that these proceedings may be lengthy ones and that in any event they may well be incomplete and no testimony taken prior to October.

"You will appreciate that it would be intolerable for the Attorney General of the United States to go to trial in October lacking important testimony because of a conflict of views between yourselves as to the propriety of perpetuating testimony; and yet, subsequently, be compelled to take that same testimony in administrative proceedings or after the proceedings on the petition to perpetuate have been finally determined. The only interest of the Attorney General of the United States is to secure this testimony promptly. We are prepared to

stipulate with either party, or both, that if the sworn testimony of Mrs. Stinnes can be taken in the near future before the United States Consul in Duesseldorf, Germany, which we understand is her home, that testimony, insofar as it is relevant, competent and material, may be used in any proceeding under the Trading with the Enemy Act, judicial or administrative, to which the Attorney General is a party.

"We, therefore, take this opportunity of notifying you that pursuant to the powers vested in the Attorney General of the United States and in myself under the Trading with the Enemy Act, as amended, we are requiring Mrs. Stinnes to appear before the United States Consul at Duesseldorf, Germany, on August 1, 1955 for the purpose of giving sworn testimony relating to the claims which she has filed with this Office and for the purpose of giving sworn testimony with respect to the issues in the pending litigation brought by Mrs. Wagenknecht. Your attention is specifically called to the following provision of the Rules of Procedures for Claims of the Office of Alien Property (Code of Federal Regulations, Title 8, 502.25(g)):

186 (g) A claim shall be deemed abandoned when after request to do so the claimant has not furnished relevant information in support of his claim, or where by virtue of his failure to respond to inquiries regarding the claim it appears that he does not wish to pursue it further. The Hearing Examiner may on his own motion dismiss a docketed claim as abandoned when the claimant fails to produce any information or document ordered so produced by the Hearing Examiner.

"We are not, of course, opposed to the present petition to perpetuate and if the Court is disposed to order the perpetuation we see no reason why it cannot be done on August 1, 1955. In any event, however, for the reasons which we have discussed above you are advised that we intend to proceed under our administrative powers to take the testimony on that date.

"If you have any questions concerning this matter or wish to

arrange details for the convenience of counsel, please communicate directly with Messrs James D Hill, or Robert Wieferich of my staff."

The identity of Mr Albrecht as attorney for Mrs Wagenknecht and the Dutch corporation in this proceeding with Mr. Albrecht as their attorney in their claims proceedings before the Attorney General, and the litigation against the Attorney General, is demonstrated by the fact that on June 30, 1955, Mr Albrecht and the Attorney General stipulated that the deposition of the petitioner in this proceeding, would be admissible in evidence in such claims proceedings and litigation.

Thus, to parade Mr Albrecht as "court-appointed" attorney for Mrs Wagenknecht and the Dutch corporation, does not fairly depict his true relationship to his clients in this proceeding or his essential interest herein.

III

MR. ALBRECHT'S FEES AND EXPENSES - THE CONSENT ORDER OF JULY 11, 1955

Mr Albrecht's fees and expenses for participating in the taking of the petitioner's deposition were the subject of consideration by him long
18/ prior to the institution of this proceeding, when, as attorney for Mrs. Wagenknecht and the Dutch corporation, his consent to the perpetuation of petitioner's testimony was first sought. At that time, Mr. Albrecht suggested his willingness to consent if petitioner would agree that the depositions of certain persons, theretofore taken in the aforementioned litigation between Mrs Wagenknecht and the Attorney General (to which petitioner has never been a party), would be admissible in possible future litigation between petitioner and Mrs. Wagenknecht or the Dutch corporation. Mr Albrecht also indicated that he would insist on an agreement that petitioner pay him his counsel fees and reimburse him for his expenses. The details of the latter were not, however, fully explored at that time, for the reason that it was obviously impossible for us to agree to the admissibility of depositions of witnesses whom petitioner had never had an opportunity to cross-examine, and we so advised Mr Albrecht. There-

after, this proceeding was instituted on May 13, 1955, the hearing before Judge Curran, referred to above, was had on June 8, 1955, the Order of June 13, 1955, was entered, and service of the petition and the notice of hearing thereon, returnable July 11, 1955, was effected in accordance with such Order.

On June 30, 1955, at Mr. Albrecht's request certain of my partners and I and Mr. Wieferich of the Department of Justice met with Mr. Albrecht and Mr. Butler at Mr. Butler's office. Mr. Albrecht submitted for our consideration a proposed consent order herein, a copy of which is attached hereto as Exhibit A. It will be noted that in his proposed Order Mr. Albrecht provided for a payment in advance of $1,500 to him against his expenses and for the eventual payment to him of a reasonable attorney's fee to be computed on the basis of the number of days engaged in travelling to and from the place of the taking of the deposition and the attending of the
188 taking of such deposition, the precise amount of the expenses and fees to be determined by the Court. It will also be noted that it contains no provision for the posting of security or weekly payments on account of expenses.

Mr. Albrecht's proposed Order (Exhibit A) was unacceptable primarily because of certain of its substantive provisions, and no agreement was reached at that meeting. On July 6, 1955, in the interests of moving forward promptly in the taking of petitioner's deposition, we wrote Mr. Albrecht a letter, a copy of which is attached hereto as Exhibit B. With such letter, we transmitted our draft of a proposed consent Order, a copy of which is attached as Exhibit C. As will be noted from our draft consent Order (Exhibit C) we in large measure accepted the provisions of Mr. Albrecht's proposed consent Order with respect to his fees and expenses. In fact, except for the deletion of the provision for a cash advance, the provisions we proposed in this regard were substantially the same as Mr. Albrecht's.

However that may be, the matter of his fees and expenses was the subject of further conversations with Mr. Albrecht on the telephone on Friday, July 8, 1955, and at a conference the following Monday morning,

July 11 (the return date of the application on the petition herein) held at the office of Mr. Wieferich of the Department of Justice, who represents the Attorney General and Atlantic Assets Corporation, also named as expected adverse parties in the petition herein. During these conversations Mr. Albrecht raised again the question of a cash advance, and for the first time insisted on the posting of security and weekly payments on account of his expenses so long as the deposition continued. We had no difficulty in agreeing to $1,000 as a cash advance, but his other demands, not having been made until the eleventh hour, took us completely by surprise. However, in order to avoid the possibility of any further delays in the taking of petitioner's deposition, considering not only the precarious condition of
189 her health, but also the position which Assistant Attorney General Townsend had taken in his letter of June 29, 1955, quoted above, we acquiesced in Mr. Albrecht's demands in their entirety, and the amounts to be paid to him weekly and the amount of security to be posted, which were set out in the proposed Order submitted on consent to Judge Morris and which was entered herein on July 11, 1955, were those demanded by Mr. Albrecht, and did not reflect any compromise whatsoever.

IV

MR. ALBRECHT WAS UNDER NO MISAPPREHENSION WHEN HE SET THE AMOUNT OF THE SECURITY HE WANTED

As Mr. McMahon points out in his affidavit, the petition herein discloses the advanced age of the petitioner and the frailty of her health. That these factors would limit the daily sessions to a few hours each was known by Mr. Albrecht before the Order of July 11, 1955, was agreed to, and had been the subject of prior conversation between counsel in coming to an estimate as to how long the taking of petitioner's deposition might continue. Indeed, the Order of July 11, 1955, reflects this in its provision that

> "* * * in view of petitioner's age and the state of her health, the taking of her deposition may be recessed from time to time as may appear necessary or appropriate to said attorneys * * *."

This provision appeared in Mr. Albrecht's draft Order (Exhibit A) which

he submitted to us at the meeting in Mr. Butler's office on June 30, 1955. Mr. McMahon also suggests that the necessity of translating the questions put to the petitioner and her answers, has slowed up the examination. But that the services of an interpreter would be necessary was also known to counsel, including Mr. Albrecht, before the Order of July 11, 1955, was consented to, and was among the matters discussed when they undertook
190 to make their estimate. This is reflected in the provision of the Order of July 11, 1955, that the petitioner shall

> "* * * bear all expenses incurred in connection with the taking of her deposition * * * including the employment of * * * interpreters * * *".

A provision to the same effect also appeared in the draft Order (Exhibit A) which Mr. Albrecht submitted at the June 30, 1955, meeting. Indeed Mr. Albrecht recently stated in the course of taking the petitioner's deposition herein (Tr. p. 164):

> "I think I should recall to you at this point that when we first conferred in Washington relative to the taking of this deposition, we recognized the fact that we were dealing with an elderly person whom we would not be able to interrogate in English, who was furthermore infirm * * * We further recognized the fact that we might not be able to examine the witness for more than one hour or two a day."

Mr. McMahon further suggests that the deposition will necessarily take longer than Mr. Albrecht reasonably anticipated because the petitioner's testimony that she was the owner of the property in question is in contrast to that of certain witnesses who had previously testified in other proceedings that such property was owned by others, presumably Mrs. Wagenknecht and the Dutch corporation. But that petitioner was going so to testify has been clear since the very institution of this proceeding, for the petition refers specifically to the notice of claim the petitioner had filed with the Attorney General in February (a public record available to all interested persons) and states in unmistakable terms that the petitioner's purpose was to perpetuate her own testimony as to her ownership of all or substantially all of the property vested pursuant to enumerated vesting orders,

and that Mrs Wagenknecht and the Dutch corporation also claimed certain of such property. Mrs. Wagenknecht and the Dutch corporation made their claims to such property in proceedings and litigation in which Mr. Albrecht represents them. The obvious conflict is highlighted in Assistant
191 Attorney General Townsend's letter of June 29, 1955, quoted above, and is the reason why Mrs. Wagenknecht and the Dutch corporation were named as expected adverse parties. Moreover, Mr. Albrecht was fully familiar with the testimony of the witnesses in the other proceedings, referred to in Mr McMahon's affidavit, as he had participated in their examinations as Mrs. Wagenknecht's attorney long before the institution of this proceeding.

Thus, all the factors suggested as causing the examination to continue longer than Mr Albrecht allegedly anticipated, were known to Mr. Albrecht before the Order of July 11, 1955, was submitted to Judge Morris on consent. Furthermore, nothing in such Order as much as suggests that the security to be posted was to cover his fees and expenses for any limited period, and certainly the cash advance of $1,000 and the weekly payments of $250 must have exceeded his reasonable out-of-pocket disbursements.

V

THE TIME ALREADY CONSUMED IN TAKING PETITIONER'S DEPOSITION AND MR. ALBRECHT'S PREDICTIONS AS TO THE FUTURE

Pursuant to stipulation, the taking of petitioner's deposition in this proceeding and pursuant to Assistant Attorney General Townsend's letter of June 29, 1955, quoted above (both proceedings are being conducted as one) was commenced on August 30, 1955. Direct examination, conducted by my partner, James H Mann, Esq., consumed four daily sessions. Cross-examination by Robert J. Wieferich, Esq., attorney for the Attorney General and Atlantic Assets, took up two daily sessions and a part of a third. Unless there have been recesses concerning which I have not been informed, Mr Albrecht has to date (September 23, 1955) cross-examined the petitioner during twelve daily sessions and part of a thirteenth. According to Mr. McMahon's affidavit (sworn to September 19, 1955) Mr
192 Albrecht estimates that his cross-examination will continue for four

additional weeks. The reasons assigned are patently specious. Mr. McMahon says:

> * * * Mr. Albrecht advises your deponent that the cross-examination is necessarily an extended one for the following reasons: On direct examination, the petitioner asserted a claim to all of the vested property claimed by Mr. Albrecht's clients, Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij. The property involved is substantial, being valued at several million dollars at current market prices. The petitioner on direct admitted that in all her German property tax and other returns, as well as in her reports to the Allied Occupation Authorities, to the Military Government, etc., this property was not listed as belonging to her. She has stated that these returns and reports were incorrect and that this was done in an effort to camouflage her husband's and her ownership in these properties. The testimony of the petitioner is completely unsupported by any written evidence. It is, moreover, directly contrary to the documentary evidence and testimony secured by Mr. Albrecht in the pending Section 9 suits brought by his clients and contained in the depositions filed therein of the witnesses, Hugo Stinnes, Jr., Wilhelm Unger, Dr. Paul Gmur, Wilhelm Neumann, Torsten Svensson, and H. C. von Linsingen, as well as the Government's witnesses Otto Stinnes and Bernard E. Roos. Mr. Albrecht, in his cross-examination, will of necessity have to confront the petitioner with said documentary evidence and with the conflicting testimony of the witnesses. Accordingly, the cross-examination of the witness will require much more time than her direct testimony.

The petitioner's testimony is properly summarized. Thus, on direct she testified:

> Q: Mrs. Stinnes, do the tax returns which have been filed on your behalf with the German authorities, show you to be the owner of the property which you have claimed in this document, Petitioner's Exhibit Number 12, * which I have just shown you?

* A copy of the notice of claim filed in February, 1955, by petitioner with the Attorney General claiming the property in question

A: I have filed this document, Petitioner's Exhibit Number 12, in the meantime with the German authorities.

Q: But did your former tax declarations set out this property?

A: No.

Q: Do I understand that you have now told the German tax authorities about your foreign holdings?

193 A: Yes.

Q: Mrs. Stinnes, why after concealing this fact from the German authorities all these years, did you decide that you should claim this property in the United States and that you should acquaint your Government with the fact that you had withheld information?

A: This question cannot be answered with two sentences. In order to make it clear in all details I could perhaps speak for two hours. It was in April 1924, after my husband had died, when I took over as his heir I was confronted with things that had already been done everywhere I endeavored to continue to the best of my strength, acting the same way he did and to use the same paths that he had made uninterruptedly. With reference to the foreign values which were camouflaged I was forced to leave everything the same way and also where things developed further to act according to his intentions In addition, the economic condition became more and more difficult in Germany. I only wish to refer to the time of the inflation, to the reconstruction, to the difficulties with foreign currency, to the Nazi time during which foreign currency control regulations became still stricter Then followed the war of a many years which ended with the collapse of Germany and was followed by the time of occupation after the collapse. We were left with only a small rest of the former large fortune, the Hugo Stinnes o H in Mulheim. Now there was the task to take all strength together and to build up on this small basis wherever there was an opportunity. This soon led to great differences between my son Otto and myself on one side and my son Hugo on the other side. I do not want to impose on you, because

this does not refer to the matter itself, what fights that happened in those two or three years and which ended with a complete break with my son Hugo who had been my collaborator for 25 years. It was a terrible day. Later on, when I had to reflect what had to be done, I had the idea that above all I should examine the entire events of the last two decades. This idea was in particular thrown upon me because my son Hugo - and that was the reason for the break - would not understand that in a true partnership as the Hugo Stinnes o. H. represented, he could not be the only master and dictator, but could only act in unanimity with his partners. The final result of all my considerations was in the end the conviction that in the years past, when I had acted in blind confidence to my son Hugo and had followed him, I must have acted wrongly many times. Furthermore, the idea pressed itself upon me that in view of my age I should, above all, create a clear situation in particular regarding the foreign property, so that not one day perhaps my son Hugo would retain something while my other children would remain with more or less nothing. The justice toward my other children required from me, come what may, not to think of anything else but to consider it my most important task to submit this claim in the end. Then at least, if
194 I should die one of these days, I could close my eyes with a clear conscience and in the feeling that I had done everything for those of my children who stood with me that I had been able to. I do not know whether I will ever receive back from the Americans my property. I hope so, but I do not know it. Certainly I will not be able to live to that day. But now I have a clear conscience and this is the most valuable thing a person can have. I can say no more to this question

Thus, having testified that her returns and reports filed with the German government and its successors during the occupation did not disclose her ownership of the property in question (and to that extent were false), is it necessary, as Messrs Albrecht and McMahon claim to think,

that she be confronted with each such document and asked whether it referred to the property now claimed by her, and whether it was a true or false report? While this might be quite dramatic, it would appear to be unnecessary, for petitioner has already testified that none of them contained any reference to the property at issue, and that she was guilty of filing false reports and returns when she caused or permitted them to be filed. Since she admits that up to the time she filed her claim with the Attorney General in February, 1955, the course she pursued was to conceal her ownership of the property in question, what useful purpose can it serve to confront her with the testimony of intimates and associates (given it should be noted before February, 1955, when she filed such a claim) that they had no knowledge and saw no evidence of her ownersnip of such property, or that they believe it belonged successively to her brother and his widow and heir, Mrs. Wagenknecht? Moreover, since the petitioner has testified in effect that her brother, the late Mr. Wagenknecht, acted as a "cloak" (she uses the term "trustee") for her late husband and herself with respect to property outside of Germany (the property here in question being property which Mrs. Wagenknecht claims to have "inherited" from her husband), what useful purpose can it serve to show the petitioner title deeds, contracts, bank statement, corporate records,

195 correspondence, and the like indicating the Wagenknechts to be the owners of the property in question?

Obviously, cross-examination along such lines could continue almost ad infinitum, but under the circumstances as they here exist, its only consequence could be unnecessarily to prolong the taking of the deposition and to harry and unreasonably to oppress the petitioner. Admittedly, persons other than the petitioner were ostensibly the owners of the property, and had record title to it. This the petitioner has explained as reflecting a furtive scheme going back many decades, to conceal her ownership of the property and before his death, her husband's. While the plethora of documents which are consistent with the ostensible ownership of the property and the testimony of others with respect to their understanding as to its ownership may well be matters for the ultimate triers of the facts to take

into consideration, they hardly constitute matters with which the petitioner must be confronted on cross-examination. As to the former, they are consistent with her testimony, and as to the latter, perhaps the witnesses did not know of the scheme, or if they did, perhaps they testified in furtherance of it. It is submitted, therefore, that the mere threat to continue cross-examination for four weeks more for such purposes is evidence of counsel's bad faith and his purpose unreasonably to oppress the petitioner.

VI

THE MANNER IN WHICH MR. ALBRECHT HAS CONDUCTED HIS CROSS-EXAMINATION OF THE PETITIONER IN THE PERIOD SEPTEMBER 6 - 19, INCLUSIVE

I have been furnished by Mr. Mann with a copy of the transcript of petitioner's examination through September 19, 1955, consisting of 202 pages of legal cap, and the same will be submitted to the Court upon the argument for consideration in connection with these motions. From such transcript it appears that Mr. Mann's direct examination is reported on
196 63 pages, Mr. Wieferich's cross-examination covers 26 pages and a part of another, while Mr. Albrecht's cross-examination in the period beginning September 6, and ending September 19 (the date on which Mr. McMahon said he would require four more weeks) covers a fraction less than 111 pages.

The time that Mr. Albrecht has already consumed and the additional four weeks that he threatens to consume in cross-examination may very well result from his very peculiar misunderstanding of the scope of a deposition. For, notwithstanding the provisions of Rule 26 (b), which are applicable to depositions taken under Rule 27, Mr. Albrecht stated on the record (p. 110):

> * * * The questions that I may properly ask the witness need not necessarily be relevant at all. There are other reasons for asking questions on cross-examination from a witness and it would seem to me that I would not have to make this clear to you, Mr. Mann * * *.

This remark was made in response to Mr. Mann's objection to Mr. Albrecht's inquiry of the petitioner as to whether she had made any wills

subsequent to the joint (but not reciprocal) will she and her late husband had executed, and under which she claims to have inherited the property in question. As the record shows, since her husband's death in 1924, there have been serious fallings-out and some reconciliations between petitioner and certain of her children, and Mr. Albrecht's questions concerning the petitioner's testamentary acts, and his subsequent demand (p. 143) that the petitioner produce any later wills executed by her are matters clearly without relevancy as Mr. Albrecht readily admits. They obviously could have no purpose other than unreasonably to oppress the petitioner.

So, too, Mr. Albrecht's incessant demand for the production during the course of the taking of petitioner's deposition of a vast number of documents not referred to during his, Mr. Mann's or Mr. Wieferich's exam-

197 inations of petitioner, and in connection with which he has made no application for an Order of the "character provided for in Rule 34" as specified in Rule 27, under which this proceeding is being conducted. While, generally speaking, petitioner has no reason not to produce such documents (and many have been produced), Mr. Albrecht's failure to ask for their production prior to the commencement of the taking of petitioner's deposition or to move for an Order requiring their production, has served to prolong, and, unless this Court intervenes, will serve further to prolong Mr. Albrecht's cross-examination over the additional period predicted by Mr. McMahon, if not longer, to the harrassment and oppression of the petitioner. Thus, at p. 133 of the transcript, Mr. Albrecht, in response to a question as to how long his cross-examination would continue, said:

> * * * I am unable to estimate at this time the length of my cross-examination. The same will depend to a large extent on whether you will be able to supply me with the documents I have requested
> * * *

That might have been determined well before the commencement of the examination. For an indication of how much time these demands have consumed, reference is made to the following pages of the transcript, in addition to those already noted: 112, 113, 114, 115; 116; 121-123; 124;

133-136; 137-138; 143-144; 161; 177-178 But this is not all; on September 19, Mr. Albrecht addressed Mr. Mann as follows (p. 202):

> * * *You have produced a number of documents at my request * * * and you will be asked to produce further documents that will be required in my cross-examination of the petitioner * * *.

IN CONCLUSION

It is submitted that the grounds asserted for requiring petitioner to post additional collateral for the payment of Mr. Albrecht's fees and expenses are without substance and would not justify the Court in modifying the provisions of the Order of July 11, 1955, which was entered upon consent.

198 It is further submitted that Mr. Albrecht's cross-examination of the petitioner has already been prolonged by him to the point of unreasonable oppression and that the Court should terminate the same forthwith or order that it be terminated at the conclusion of such further time as may appear to the Court to be reasonable under the circumstances.

/s/ John W. Pehle
John W. Pehle

Sworn to before me this 26th day of September, 1955.

/s/ Lorraine D. Basich
Notary Public

My commission expires June 14, 1958

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199 [Filed September 26, 1955]

EXHIBIT A

ORDER AND CONSENT

Upon the petition filed herein under Federal Rule 27 of Civil Procedure for an order authorizing the taking of petitioner's deposition upon oral examination for the purpose of perpetuating her testimony, and pursuant to the provisions of Federal Rules 27, 28, 29 and 30 of Civil Procedure, and upon the consent of the undersigned attorneys for petitioner and all expected adverse parties named in the petition, it is hereby

ORDERED that the petition be and hereby is granted and that petitioner is granted leave to take her deposition upon oral examination for the purpose of establishing the facts sought to be established by her and which are set forth in paragraph 10 of the petition, as follows:

(a) That petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr., and

(b) That all or substantially all of the properties vested by the Attorney General of the United States, as successor to the Alien Property Custodian, under Vesting Orders Nos. 84, 197, 2080, 2170, 6641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268 and 19307, were included in the residuary estate of said Hugo Stinnes, Sr., were the proceeds
200 or increment of such property, or otherwise directly or indirectly beneficially owned by the petitioner on the dates of the vesting thereof; and it is

FURTHER ORDERED that the taking of petitioner's deposition shall commence on or about July 15, 1955 or at such other time as may meet the convenience of the attorneys for the respective parties to proceed, and shall continue thereafter until completed, but shall in no event extend beyond August 15, 1955; and petitioner is hereby directed to appear at such time and give her deposition upon oral examination pursuant to this order; and it is

FURTHER ORDERED that the deposition of petitioner shall be taken at the American Consulate General, Cecilienallee, Dusseldorf, Federal Republic of Germany, or at any other suitable place, in the presence of an American consular representative or any person designated in Rule 28, a stenographer, an interpreter, the undersigned attorneys for the petitioner and the expected adverse parties and, if required, a physician to attend petitioner; and in view of petitioner's age and the state of her health, the taking of her deposition may be recessed or continued from day to day and from time to time as may appear necessary or appropriate to said attorneys; and it is

FURTHER ORDERED that the examination of petitioner upon the taking of her deposition shall be conducted by counsel in the following order:

(a) Attorney for petitioner,

(b) Attorney for the Attorney General and Atlantic Assets Corporation, and

(c) Attorney for Mrs. Elsa W. de Wagenknecht and

201 N. V. Edmund Wagenknecht's Handel Maatschappij,

and shall continue in such rotation until the examination has been completed; and it is

FURTHER ORDERED that upon completion of petitioner's deposition, the same shall be signed by petitioner and completed and certified in all other respects as provided in Rule 30 and shall thereupon be transmitted by registered mail to the Clerk of this court and filed with the records of this proceeding; and such deposition taken pursuant to this order, if completed, or any part thereof, shall be receivable in evidence on the offer of petitioner or any named expected adverse party, or their heirs, executors, administrators, assigns, successors in office or successors in interest in any civil action cognizable in this court that may hereafter be instituted therein by petitioner, her heirs, executors, administrators, assigns or successors in interest, against any one or more of said expected adverse parties, on the ground of the unlawful withholding from petitioner, or other plaintiff in such future action, of the property interests vested under said vesting orders enumerated above Any and all objections with respect to materiality, relevancy or competency shall be reserved for the trial in which it is sought to offer said deposition or any part thereof, except that any objections as to form shall be deemed waived unless noted upon the taking of the deposition; and it is

FURTHER ORDERED that all expense incurred in connection with the taking of petitioner's deposition, including the payments required to be made to any American consular official or other person designated in Rule 28, and including the expenses of interpreters and stenographers, and for one copy of the transcript of petitioner's deposition to be supplied gratis

202 to each of the attorneys for the expected adverse parties, shall be paid by petitioner; and it is

FURTHER ORDERED that petitioner shall pay in advance to the

Department of Justice the sum of $1500 as a payment on account of the necessary expenses of the undersigned attorney representing the Attorney General and Atlantic Assets Corporation, including his traveling expenses from and to Washington and to and from the place of the taking of petitioner's deposition, and his necessary hotel and living expenses at such place throughout the duration of the taking of such deposition; and it is

FURTHER ORDERED that the petitioner shall pay in advance to the undersigned attorney appointed by the court for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, the sum of $1500 as a payment on account of his necessary traveling expenses from and to New York and to and from the place of the taking of petitioner's deposition, and his necessary hotel and living expenses at such place throughout the duration of the taking of such deposition; and it is

FURTHER ORDERED that the petitioner shall pay to said attorney appointed by the court for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, a reasonable attorney's fee to be computed on the basis of the number of days that said attorney shall be engaged in traveling to and from the place of the taking of petitioner's deposition and attending the taking of said deposition until the same has been completed; and it is

203 FURTHER ORDERED that upon completion of the taking of petitioner's deposition the court will, upon application to it, (a) determine the amount of the traveling and other expenses incurred by the attorneys for the expected adverse parties and which are properly payable by petitioner, and will order any balance of such expenses, if any, over and above the payments made on account of the same, to be paid by petitioner, and (b) determine the amount of the fee payable to said attorney appointed by the court for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij and will order petitioner to pay the same.

Dated, Washington, D. C., July 1955.

_____

United States District Judge

We hereby consent to the entry of the above order.

Pehle, Lesser, Mann, Riemer & Luxford
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By: _____
A Member of the Firm

_____
Robert J. Wieferich
Attorney, Office of Alien Property
Department of Justice
Washington 25, D. C.
Attorney for Herbert Brownell, Jr.,
Attorney General of the United States,
and Atlantic Assets Corporation,
expected adverse parties

_____
Ralph G. Albrecht
By appointment of the Court, Attorney
for Mrs. Elsa W. de Wagenknecht and
N. V. Edmund Wagenknecht's Handel
Maatschappij, expected adverse parties
501 Fifth Avenue
New York 17, N. Y.

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204 [Filed September 26, 1955]

EXHIBIT B

PEHLE, LESSER, MANN, RIEMER & LUXFORD

1210 Eighteenth Street, N. W.
Washington 6, D. C.

July 6, 1955

Ralph G. Albrecht, Esq.
c/o Henry F. Butler, Esq.
1511 K Street, N. W.
Washington 5, D. C.

Re: Petition of Mrs. Hugo
Stinnes, Sr., etc.

Dear Mr. Albrecht:

Since our meeting with you and Mr. Butler on June 30, 1955, we have had occasion to consider the matter further, among ourselves and

with representatives of the Department of Justice. The latter emphasized again the urgent desire of the Department to proceed with all possible dispatch to the taking of Mrs. Stinnes' deposition, and we, for our part, are of necessity disposed to extend to the Department the utmost cooperation to that end. In this circumstance, and in view of Assistant Attorney General Townsend's letter of June 29, 1955, to you and to us, we are led in large measure to accept the suggestions contained in the proposed consent order prepared by you and which was the subject of discussion at the meeting referred to. We do find, however, as we told you at the meeting, that substantively the proposed Order was somewhat narrower than envisioned by the Rules. Accordingly, we have redrafted the proposed Order in this and certain other particulars, and we enclose herewith the original and two copies of our redraft for your consideration. We are simultaneously sending a copy thereof and of this letter to the Department of Justice.

If the enclosed is satisfactory to you, please sign the original and return it to us as soon as possible. If you have any modification to suggest, we ask that you or Mr. Butler advise us by telephone promptly.

You will appreciate that in redrafting the proposed Order we have attempted to meet your point of view insofar as possible in an effort to dispose of this matter without the possibility of further delay. On the other hand, if you or the Department of Justice are not in agreement with the proposed Order as redrafted, or we are unable to agree on such changes, if any, as may be suggested, our action in furnishing the attached draft to you and the Department of Justice is without prejudice to our pressing before the Court our position, including our view that, in the circumstances here present, the petitioner should not be required to pay your fees and expenses.

205

Very truly yours,

PEHLE, LESSER, MANN, RIEMER & LUXFORD

By (signed) John W. Pehle

Enclosures

P. S. At the suggestion of Henry Butler, Esq. the original of this letter is being sent to you at 501 Fifth Avenue, New York, New York, together

with the original and one carbon copy of the proposed Order. At the same time a carbon copy of the letter and the proposed Order are being sent to you in care of Mr. Butler.

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206 [Filed September 26, 1955]

EXHIBIT C

ORDER

Upon the petition herein, duly verified May 12, 1955, for an Order pursuant to Rule 27 of the Federal Rules of Civil Procedure authorizing the taking of the deposition of the petitioner upon oral examination for the purpose of perpetuating her testimony, petitioner's notice herein of application for the Order described in the petition, returnable July 11, 1955, the subscribed consent of the petitioner and all expected adverse parties named in the petition, by their respective attorneys, and upon all of the proceedings had heretofore herein, and

The Court being satisfied that the perpetuation of petitioner's testimony may prevent a failure of justice, it is, this day of July, 1955,

ORDERED that the petition be, and it hereby is in all respects granted, and that the petitioner be, and she hereby is authorized to take her own deposition upon oral examination for the purpose of perpetuating her testimony with respect to the facts she desires to establish, to wit:

(a) That petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr., and

(b) That all or substantially all of the property vested by the Attor-

207 ney General of the United States, as successor to the Alien Property Custodian, under Vesting Orders Nos. 84, 197, 2080, 2170, 6641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268 and 19307, were included in the residuary estate of said Hugo Stinnes, Sr., were the proceeds or increment of such property, or were otherwise directly or indirectly beneficially owned by the petitioner on the dates of the vesting thereof; and it is

FURTHER ORDERED that the petitioner's said deposition be taken at the American Consulate General, Cecilienallee, Dusseldorf, Federal Republic of Germany, before an American Consular officer or other person duly designated in Rule 28 of the Federal Rules of Civil Procedure, that the taking thereof commence on August 15, 1955, at 10:30 o'clock in the forenoon of that day, or at such other time or place as may be unanimously agreed upon by the attorneys for the petitioner and the expected adverse parties named in the petition, and shall continue from day to day until completed, provided, however, that in view of petitioner's age and the state of her health, the taking of her deposition may be recessed from time to time as may appear necessary or appropriate to said attorneys; and petitioner is hereby directed to appear at such place and at such time and times and give her deposition; and it is

FURTHER ORDERED that the examination of petitioner upon the taking of her deposition shall be conducted by counsel in the following order:

(a) Attorney for petitioner,

(b) Attorney for the Attorney General and Atlantic Assets Corporation, and

(c) Attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij,

and shall continue in such rotation until the examination has been completed; and it is

208 FURTHER ORDERED that upon completion of the transcription of petitioner's deposition, the same shall be submitted to petitioner for her signature, certified, as provided in Rule 30 of the Federal Rules of Civil Procedure, and shall thereupon be transmitted by registered mail to the Clerk of this Court and filed with the records of this proceeding; and such deposition so certified, or any part thereof, shall be receivable in evidence in any civil action in any court of the United States between petitioner, her heirs, executors, administrators or assigns, and any expected adverse party or parties named in the petition or their heirs, executors, administrators, assigns, successors in office or successors in interest, the subject matter of which is the beneficial ownership, direct or indirect, on

the dates of the vesting thereof, of any of the properties vested by the Alien Property Custodian, the Office of Alien Property Custodian and the Attorney General of the United States under Vesting Orders Nos. 84, 197, 2080, 6641, 10207, 10443, 18248 (amended), 18864, 18941, 19258, 19268 and 19307. Any and all objections with respect to materiality, relevancy or competency shall be reserved for the trial in which it is sought to offer said deposition or any part thereof, except that any objections as to form shall be deemed waived unless noted upon the taking of the deposition, and it is

FURTHER ORDERED that the petitioner furnish a copy of the transcript of her testimony upon such deposition gratis to the attorneys for the named adverse parties, bear all expenses incurred in connection with the employment of stenographers, typists and interpreters necessary to the taking of her deposition, and shall pay such fees, if any, as may be due to the American Consular officer or other person before whom her deposition is taken; and it is

FURTHER ORDERED that the travel and per diem expenses of the Attorney General of the United States incurred in connection with the taking
209 of petitioner's deposition pursuant to this Order be deemed conservatory expenses within the meaning of Section 32 (g) of the Trading with the Enemy Act, as amended, and may be charged by the Attorney General of the United States as such against any property or interest or proceeds thereof which he may return to petitioner; and it is

FURTHER ORDERED that the petitioner shall pay to Ralph G. Albrecht, attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, a reasonable attorney's fee for his services in connection with the taking of petitioner's deposition pursuant to this Order, and all reasonable expenses incurred by him in travel between New York and Dusseldorff (and return) and for board and lodging in Dusseldorff incurred in connection with the taking of such deposition, and that upon completion of the taking of petitioner's deposition the Court will, upon application and notice, (a) determine the amount of the travel and other expenses incurred by said attorney for Elsa W. de Wagenknecht and

N. V. Edmund Wagenknecht's Handelmaatschappij, to be paid by petitioner, and (b) determine the amount of said attorney's fee to be paid by petitioner to said attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij.

_____
United States District Judge

Consented to:

Pehle, Lesser, Mann, Riemer & Luxford
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By: _____
A Member of the Firm

Robert J. Wieferich
Attorney, Office of Alien Property
Department of Justice
Washington 25, D. C.
Attorney for Herbert Brownell, Jr.,
Attorney General of the United States,
and Atlantic Assets Corporation

By: _____

Ralph G. Albrecht, and Henry F. Butler
210 Attorneys for Mrs. Elsa W. de Wagenknecht
and N. V. Edmund Wagenknecht's Handelmaatschappij.
c/o Henry F. Butler, Esq.
1511 K Street, N. W.
Washington 6, D. C.

By: _____

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214 [Filed October 4, 1955]

SUPPLEMENTAL AFFIDAVIT

CITY OF WASHINGTON)
ss:
DISTRICT OF COLUMBIA)

Since my affidavit of September 26, 1955, I have been advised of certain facts, and there have been new developments of which the Court should be apprised.

1. At page 12 of my said affidavit (the sentence beginning on the fourth line from the bottom) I stated that unless there were recesses of which I was not aware, as of September 23, Mr. Albrecht had cross-examined petitioner during twelve daily sessions and part of a thirteenth. I am now advised that the examination was recessed over September 21, so that the correct figure would have been "eleven daily sessions and part of a twelfth." However, Mr. Albrecht has conducted cross-examination during two daily sessions since September 23, so that to date his examination has continued over thirteen daily sessions and part of a fourteenth. His cross-examination through September 27 adds some eighty pages to the fraction less than 111 pages referred to on page 17 (third line) of my said affidavit.

2. I have now received copies of the transcript of the examination of petitioner from September 20 through September 27, and the same will be submitted to the Court for consideration upon these motions. In addition to the pages referred to on page 18 of my said affidavit, I refer to the following pages of the newly received portion of the transcript: 206-213; 227-234; 246-252, 253; 266-7; 284-5.

215 3. On orders of Professor H. Bottner, the petitioner's physician in Mulheim, a recess was taken after the September 27 session to October 5. See pages 267, 268 of the transcript. The original of Professor Bottner's certificate with respect to the deterioration in petitioner's health which prompted his action was received by my firm only yesterday. It will be available in Court upon the argument of these motions, and leave is requested to submit a photocopy thereof for the record. Since September 27, the petitioner has entered, I am informed, and is now confined in the University Hospital, Hamburg, where she is under the care of Dr. H. H. Berg. My firm also received yesterday Dr. Berg's certificate as to petitioner's health and his recommendations in the premises. This certificate will also be available in Court upon the argument of these motions, and leave is requested to submit a photocopy thereof for the record. Dr. Berg's certificate, which is in English, appears garbled in at least one place and lacking in preciseness in another. This apparently occurred to

Mr. Mann, and yesterday we received a cable of explanation purporting to quote Dr. Berg on these points. This cable will be available in Court upon the argument of these motions, and leave is requested to submit a photocopy thereof for the record.

/s/ John W. Pehle
John W. Pehle
Attorney for Petitioner
1210 18th Street, N. W.
Washington, D. C.

Sworn to before me this 4th day of October, 1955.

/s/ Lorraine D. Basich
Notary Public

My commission expires June 14, 1958.

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216 [Filed October 4, 1955]

EXHIBIT A

TRANSLATION

Prof. H. Bottner

Mulheim/Ruhr,
Sept. 26, 1955.

Doctor's Certificate.

RE: Deposition of Mrs. Clore Hugo Stinnes sen. at the Consulate General of the United States of America, Dusseldorf.

Mrs. Clare Hugo Stinnes has been under the stationary and ambulant care of my private ward of the local Evangelische Krankenhaus since a considerable time, for treatment of duodenal and stomach ulcers. In addition to those I have recently noticed that she suffers from serious heart and circulation trouble which require a strophantine treatment. To my regret I notice that the physical as well as the psychical state of the patient have deteriorated. The old lady who has now reached the age of 83 years is just not able, in the long run, to endure the strain of difficult conferences without sufficient intervals. Out of urgent medical indication I am asking, therefore, to put in a pause of at least 8 days.

sgnd. Bottner

217 [Filed October 4, 1955] EXHIBIT B

FREIE UND HANSESTADT HAMBURG

CERTIFICATE

Herewith I certify that

Mrs. Clare Hugo STINNES,

born November 26th, 1873

has been my patient since 1929. In the course of more than 25 years I have seen her with repeated clinical and roentgenological controls of her duodenal and gastric ulcer-disease. Recurrences have been observed in shorter intervals in the last years. She has been treated in my clinic 1954, Nov. 16th till December 22nd, and 1955, July 16th till August 18th. These recurrences could be brought in relation to considerable mental stress, although Mrs St is not at all hypersensitive. August 15th after the last treatment the crater of her gastric ulcer was diminished to the size of the top of a match. She was improved in every direction and was dismitted home with dietary prescriptions. Even the elevated blood sedimentation rate (60/100 mm) improved to normal values (2/5) September 10th. Yesterday, September 30th I have reexamined her with the following statements: The crater of the gastric ulcer has increased and deepened considerably in size in the course of 5 weeks to an extent never seen before in this case. It covers now the size of nearly a pigeon's egg. The surrounding tissue seems swollen, the ground of the niche is irregular and indentated. These irregularities are suggestive of clots in the neighborhood of an arroded artery. In connection with the rapid, successive deepening of the crater, these findings must be interpreted as signs of imminent danger by the two well-known complications of the ulcer-disease: perforation and bleeding. These complications have to been regarded as even more dangerous in an age of nearly 83 years. To counteract such events hospitalization was urgently necessary and the treatment of the penetration lesion has been started immediately. The return to her house could not be recommended at all. The fact seems to be striking that the rapid deterioration of the disease took place in the last three weeks. It cannot be

218 denied that this was in close correlation to the phase of extraordinary

psychical stress she has been exposed to in the cross-examinations. Concerning the pathogenity of worry and stress for the ulcer disease an international consent is out of question. I must be regarded as dangerous for health and life of the patient to continue the examinations in the manner they have been apparently held.

If Mrs. St should respond to the treatment immediately started here and if there should be the possibility to bring the examinations to an end here in the hospital definitely, it could be considered or even recommended to do so.

The stress of only a few and short sessions - under medical supervision - would be more preferable than postponing the examination in the future. The imminating decision would interfere with any serious attempt to get permanent relief from the ulcer.

/s/ Prof. H. H. Berg

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219 [Filed October 4, 1955]

EXHIBIT C

DP122 MUELHEIM RUHR TELEX 94 3 1732 PGE1/50
PELES WASHINGTONDC
PROFESSOR BERG STATES QUOTE FEW END QUOTE SESSIONS MENTIONED HIS CERTIFICATE SHOULD BE TAKEN MEAN MAXIMUM SIX FORENOON SESSIONS TWO AND ONE HALF HOURS EACH OF WHICH THIRTY MINUTES RECESS STOP SAYS INTERNATIONAL CONSENT SENTECE CERTIFICATE MEANS UNANIMOUS AGREEMENT WORRY STRESS CAUSE AND AGGRAVATE ULCERS STOP BERG FURTHER ADVISES IF DEPOSITION ADJOURNED HIS OPINION CANNOT BE RESUMED AS IN PAST MINIMUM SIX MONTHS THEN ONLY UNDER MEDICAL SUPERVISION STOP HE STRONGLY URGES PROCEDURE HIS CERTIFICATE STOP REGARDS MANN PLEASE CORRECT LAST TELEGRAM 16.50 HOURS SHOULD READ RADIOLOGY DEVISION MAYOS WALTER PALMER UNIVERSITY CHICAGO 16.50

224 [Filed October 6, 1955]

ORDER

This cause having come on to be heard on the 4th day of October, 1955, upon the motion of Ralph G. Albrecht, Esq., for an Order that the petitioner deposit immediately an additional $4,000 or an undertaking of an approved surety in that amount, to secure to him the payment of his fees and expenses hereafter to be fixed by the Court as provided by the Order herein duly entered on consent on July 11, 1955, and, for the same purpose, that the petitioner deposit on October 17, 1955, another $4,000 or another undertaking of an approved surety in that amount, in the event that the taking of petitioner's deposition should be protracted beyond October 15, 1955; and

This cause having further come on to be heard on said day upon the motion of the petitioner for an Order pursuant to Rules 27 and 30 (d) of the Federal Rules of Civil Procedure, directing the officer conducting the examination herein of petitioner to cease forthwith from taking said deposition or to cease from taking said deposition after the passage of such further time as might appear reasonable to the Court in the premises, upon the ground that cross-examination of petitioner by said Ralph G. Albrecht, Esq., was being conducted in such a manner as unreasonably to oppress the petitioner;

225 UPON CONSIDERATION of said motions, the affidavits of Gerald J. McMahon, Esq., sworn to September 19, 1955, and October 3, 1955, respectively, submitted in support of said motion of Ralph G. Albrecht, Esq., the affidavits of John W. Pehle, Esq., sworn to September 26, 1955, and October 4, 1955, respectively, submitted in opposition to said motion of Ralph G. Albrecht, Esq., and in support of petitioner's said motion, the certificate of Professor H Bottner, dated September 26, 1955, the certificate of Professor H. H Berg, dated October 1, 1955, and the cable addressed to Peles by Mann, received October 3, 1955, submitted in support of petitioner's said motion, the arguments of Henry F. Butler, Esq., and Gerald J. McMahon, Esq., in support of said motion of Ralph G. Albrecht, Esq. and in opposition to petitioner's said motion, the argument

and memorandum of points and authorities of Lawrence S. Lesser, Esq., in support of petitioner's said motion and in opposition to said motion of Ralph G. Albrecht, Esq., and the statement of James H. Falloon, Esq., of counsel to Herbert Brownell, Jr., Attorney General of the United States, and Atlantic Assets Corporation, expected adverse parties named in the petition herein, it is this 6th day of October, 1955, ORDERED that:

(1) The said motion of Ralph G. Albrecht, Esq., is in all respects denied;

(2) The taking of the deposition of the petitioner upon oral examination be resumed at the Universitats-Krankenhaus Eppendorf, Hamburg, Federal Republic of Germany, as promptly after the entry of this Order as arrangements can be made therefor and petitioner's health permits, and shall continue there to be taken until counsel shall complete the same or until to continue to take the same would, in the written opinion of petitioner's physician be unduly prejudicial to the health of petitioner, whichever occurs first;

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(3) Unless petitioner's physician shall advise the attorneys participating in the taking of petitioner's deposition that longer sessions will not be unduly prejudicial to her health, petitioner's deposition upon oral examination as hereinabove provided shall be taken as heretofore during daily sessions of not more than two and one-half hours each, including a recess of thirty minutes, provided, however, that in view of petitioner's age and the state of her health, the same may be recessed briefly from time to time as may appear necessary or appropriate to the attorneys participating in the taking of petitioner's deposition;

(4) Should petitioner's physician advise the attorneys participating in the taking of petitioner's deposition that in his opinion the taking of her deposition can continue only for a specified number of additional daily sessions without the same becoming unduly prejudicial to petitioner's health, such attorneys shall thereupon undertake to reach an agreement effecting an equitable allocation among them of the time so specified by petitioner's physician, for her further examination by each of them;

(5) The Court reserves jurisdiction, after notice to all parties, to

enter such Order on petitioner's said motion as may be appropriate in the event that prior to the completion by counsel of the taking of petitioner's deposition, petitioner's physician shall give it as his written opinion that to continue to take her deposition would be unduly prejudicial to petitioner's health; and

(6) Except to the extent hereinabove provided, the Order herein duly entered upon consent on July 11, 1955, shall continue in full force and effect. In the event of further hearing ample notice shall be given counsel and opportunity for filing points and authorities.

/s/ Luther W. Youngdahl
United States District Judge

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229 [Filed November 28, 1955]

NOTICE

TO: THE HONORABLE THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA:

YOU ARE HEREBY RESPECTFULLY REQUESTED to place upon the Motions Calendar before Hon. Luther W. Youngdahl, United States District Judge, the motion of petitioner herein, duly served and filed September 26, 1955, for an Order pursuant to Rules 27 and 30 (d) of the Federal Rules of Civil Procedure, terminating the taking of petitioner's deposition herein, the Court (Hon. Luther W. Youngdahl, United States District Judge) by Order herein duly entered October 6, 1955, having reserved jurisdiction, after notice to all parties, to enter such Order on petitioner's said motion as might be appropriate in the event that prior to the completion by counsel of petitioner's deposition, petitioner's physician should give it as his written opinion that to continue to take her deposition would be unduly prejudicial to petitioner's health, and petitioner's physician having so given it as his written opinion on October 16, 1955; and

YOU ARE HEREBY FURTHER RESPECTFULLY REQUESTED to incorporate with the papers on petitioner's said motion herein for an Order

under Rules 27 and 30(d) of the Federal Rules of Civil Procedure, duly served and filed September 26, 1955, and further in support thereof, the

230 attached affidavit of James H. Mann, Esq., sworn to the 25th day of November, 1955.

YOURS, etc.,

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By /s/ Lawrence S. Lesser
A Member of the Firm

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231 [Filed November 28, 1955]

AFFIDAVIT

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS:

JAMES H. MANN, being duly sworn, deposes and says:

I am an attorney and counsellor at law duly admitted to practice before this Court, and I am a member of Pehle, Lesser, Mann, Riemer & Luxford, 1210 Eighteenth Street, N. W., Washington 6, D. C., attorneys for the petitioner herein. I personally attended the taking of the petitioner's deposition pursuant to the Orders herein dated July 11, 1955, and October 6, 1955, in Dusseldorf, Germany, between August 30, 1955, and October 5, 1955, inclusive, and in Hamburg, Germany, between October 11, 1955, and October 16, 1955, inclusive, and I am fully familiar with all of the proceedings had heretofore herein. I make this affidavit in support of petitioner's motion for an Order terminating the taking of her deposition.

I have read and hereby adopt and reaffirm the supporting affidavit and supplemental supporting affidavit of John W. Pehle, Esq., sworn to September 26, 1955, and October 4, 1955, except that I am now advised by the Department of Justice that it was in error when it informed John W. Pehle of the existence of the stipulation referred to at page 7 of his

affidavit of September 26, 1955, and when it furnished him with a purported copy thereof. The Department of Justice now says that no such stipulation was in fact entered into and I make this correction for the record as Mr. Pehle is presently away from the city on vacation.

I

Upon the receipt in Germany of a certified copy of the Order herein dated October 6, 1955, the taking of petitioner's deposition was, in accordance therewith, resumed at the Universitats-Krankenhaus Eppendorf, Hamburg, on October 11, 1955, with Mr. Albrecht continuing to cross-
232 examine. Prior to that session, Mr. Albrecht, Mr. Wieferich and I met with Professor Dr. Berg, petitioner's physician. At the suggestion of Mr. Albrecht, Dr. Berg did not at that time undertake to estimate how long the deposition might continue without unduly prejudicing petitioner's health. Dr. Berg did, however, attend part of the October 11 session. On the morning of October 12, Mr. Albrecht, Mr. Wieferich and I again met with Dr. Berg, and at that time he told us, in words or in substance, that in his opinion there could only be five more sessions without undue prejudice to petitioner's health, and stated that he would give us a written certificate to that effect. He did so later that day, and a true and correct photocopy of Dr. Berg's said certificate, dated October 12, 1955, is attached hereto as Exhibit A.

Mr. Albrecht continued to cross-examine petitioner on October 12 after our said meeting with Dr. Berg and consumed the whole session. After the witness was excused that day, the record will show that the following transpired (pp. 18-20, Hamburg transcript):

By Mr. Mann: Let the record show that prior to yesterday's session counsel met with Professor Dr. Berg during which meeting Professor Dr. Berg explained to us the condition of the petitioner. At the suggestion of Mr. Albrecht Dr. Berg did not at that time gave us an estimate concerning how long the questioning of the petitioner might endure. He attended a part of yesterday's session and reserved judgment on the continuation of the deposition until this morning when counsel again met with Dr. Berg prior to today's hearing.

At that time he advised us that in his opinion the questioning could only endure at most for five additional sessions. Dr. Berg has stated that he would give a written certificate to that effect which, of course, will be appended to the record. In view of §4 of Judge Youngdahl's order entered on October 6th counsel are directed under such circumstances to attempt to reach an agreement effecting an equitable allocation among them of the time specified by Dr. Berg. Accordingly, I suggest to you Mr. Albrecht and Mr. Wieferich that Mr. Albrecht who has now had two sessions since we started in Hamburg take two additional sessions, that the session following be diyided between Mr. Wieferich and me for our re-direct and re-cross, and that Mr. Albrecht be given the last session for re-cross. Is that suggestion agreeable to you, gentlemen?

By Mr. Wieferich: As you gentlemen know when this matter was referred to Judge Youngdahl last week my own recommendation was that I
233 would require a session of 2 hours for re-cross examination. I believe, however, in view of the circumstances here that the suggestion of counsel is satisfactory, and I will complete my re-cross examination in 1/2 of the full session if necessary.

By Mr. Albrecht: I wish that I could agree that the matter could be disposed of so simply, as the allocation of time suggested by you, Mr. Mann. In my view a responsible attorney must decide what the interests of clients require for their protection. I have already stated that as upon her direct examination the witness has told a wholly unsupported story of alleged ownership of camouflaged foreign properties, the burden has fallen largely upon me to conduct what has proven to be a difficult cross-examination with the view of discrediting the witness and showing by her answers that her story was not logical or worthy of belief. The witness, despite her age and physical condition has shown herself to be a strong witness, and that fact necessarily has made it incumbent upon me to conduct an extended cross-examination. This cross-examination by me has not been concluded and will not be concluded within another 2 or 3 sessions.

I still have to cross-examine the witness on the basis of some of the exhibits that have been introduced on her behalf, and I also have to cross-examine her on the basis of such documentation whose production I have demanded and which has been produced. Furthermore there still remains considerable documentation to be produced which I have demanded and unless such documentation is produced and I have the opportunity to question the witness on the basis of the same I shall be unable to discharge my duty towards the prospective adverse parties whom I represent. I feel, therefore, that it is quite apparent that I shall be unable to come to an agreement which would restrict my cross-examination to two more sessions. If it is your intention, Mr. Mann, and yours, Mr. Wieferich, to restrict me to two more sessions then quite obviously I shall have to reserve all my rights to object to any effort that may be made in the future to use or offer any part of this deposition, unless, of course, we can agree upon some subsequent occasion to continue this deposition so that it may be completed. The fact that I shall be deprived at this time of my full rights to cross-examine the witness will, of course, support such further action as I may be required to take before this court or the Court of Appeals for the purpose of assuring my clients that their counsel will have full and complete opportunity to cross-question this witness.

By Mr. Mann: I take it, Mr. Albrecht, that unless there is an agreement to allocation of time, there will be none. Accordingly, I do not intend to restrict you in any way, but, of course, reserve my rights on your refusal to agree to an allocation suggested in the court order.

For completeness let the record show that prior to our convening in Hamburg for the purpose of continuing the deposition I had advised both Mr. Albrecht and Mr. Wieferich that Dr. Berg had advised me by telephone that there could only be a maximum of six
234 sessions of questioning.

By Mr. Wieferich: It is my understanding then that there is no agree-

ment on allocation, and we will go on until the Dr. indicates we may no longer in the same manner as we have yesterday and today, and each party will necessarily reserve its own rights in the event that Doctor directs the suspension or the termination of the deposition.

By Mr. Mann: That is my understanding.

Accordingly, Mr. Albrecht continued his cross-examination on October 13, 14, 15, and 16. After the close of the October 16 session, Mr. Albrecht, Mr. Wieferich and I met with Dr. Berg who orally advised us, in words or in substance, that in his opinion the deposition of petitioner could not be continued to be taken any longer without undue prejudice to petitioner's health, and gave us his written certificate to that effect dated that day. A true and correct photocopy of such certificate is attached hereto as Exhibit B.

II

The taking of petitioner's deposition began on August 30, 1955, and was stopped by Dr. Berg after the completion of the October 16 session. In this period there were, in all, twenty-five sessions during which the witness was examined. Of these, I took three and three-fourths of another for direct examination, Mr. Wieferich took one complete session and parts of two others for his cross-examination, and Mr. Albrecht took the balance, or nineteen sessions and part of a twentieth, for his cross-examination.

III

Supplementing the aforementioned affidavits of John W. Pehle, Esq., submitted in support of this motion, I call the Court's attention to the following excerpt from Mr. Albrecht's cross-examination which appears at pp. 270-272 of the Dusseldorf record:

Q: Well now, to have it entirely clear on the record. You have stated that in 1950 your conscience started troubling you and that you wanted to relieve your conscience, and now it appears affirmatively that you waited more than five years before you got around to notifying the authorities of your tax derilictions. Is that not so?

235 A: Yes, this had good reasons. After 1950 I had great difficulties and it

took a very long time to examine everything that had been done in the past under the full Power of Attorney of my son Hugo since 1924. It was impossible to clarify it any quicker, or at least what we believed to be a clarification so far.

Q: Well, have you got a nice report all written up as to your investigations in the past five years?

A: No, my lawyers have prepared that, I would not be able to do it.

Q: Well, I wish you would produce, as soon as you are able to do so, a copy of the report which your attorneys made on the basis of your investigations during the past five years. Will you please be good enough to do that?

- - - - - - - -

By Mr. Mann:

I object to that production request on the ground that it has no purpose other than to annoy, embarrass and oppress the witness.

- - - - - - - - -

A: I shall inform my lawyers about your desires.

Q: No, I did not ask you to inform your attorneys, I asked you to be good enough to produce here a copy of the report which your lawyers made to you. Will you please do that?

- - - - - - - - -

By Mr. Mann:

Mr. Albrecht, with respect to this very unusual request which you have made of the witness, I want the record to show that my firm has conducted a considerable correspondence with Mrs. Stinnes' attorney-in-fact and her German attorney. As you yourself should know, that correspondence is privileged and the witness will not produce it.

By Mr. Albrecht:

Mr. Mann, I am amazed to hear you put on the record the statement that the lawyer's communications or advices given to their client is privileged if the client consents to the revelation of such advice and documentation. I have made a demand on the witness to produce this

information. I have not made any demand on the attorneys to produce anything.

By Mr. Mann:

The witness has told you that she would inform her attorneys of your desires. Having been informed I have answered for the witness and have claimed the privilege for her.

236 By Mr. Albrecht:

Let the record show then, that unless we receive full information of precisely what advice the witness has received from her attorneys, covering her re-examination during the period from 1950 to the present day respecting the activities of the previous 30 years, I shall be unable properly to cross-examine the witness and I shall therefore have to reserve all my rights to object to any use or offer that may hereafter be made or attempted, of any part or of the whole of this deposition.

I then said, and I now reiterate:

Mr. Albrecht, I am glad that you made the record as clear as you did. It has been evident to me ever since you started your cross-examination that you were doing everything in your power to keep this deposition open so that it could not be used. And moreover I think the record is clear to the extent to which you have attempted to oppress this witness by your various oral requests for production. I am well aware of the fact that you do not want this deposition read into evidence at any time. However, I think you will have to find a better ground than the one you have chosen to keep it out. * * *

Again, at page 277 of the Dusseldorf record, Mr. Albrecht addressed the petitioner as follows:

Q: I must state again, I am not interested in what you claim. What I want to know is, what proof have you in support of what you claim? I have asked you repeatedly to bring to this hearing such proofs as you might have in support of your story that you own a lot of alleged foreign property and I must give you this last opportunity of telling me what proof you have and of bringing it the next time you appear

here so that I may have an opportunity to look at the same and to question you with respect to it. Will you please tell me whether you intend to produce such proof?

The following colloquy then ensued (pp. 277-278, Dusseldorf record):

By Mr. Mann:

Mr. Albrecht, I think that the record is clear that we have tried our best to meet your oral production requests. However, I do not believe we are required to do so. Nevertheless, I ask that you specify any documents or any evidence which you would like produced in order that a search may be made. I suggest to you, Sir, that your question and your request are too vague.

By Mr. Albrecht:

You seem to have forgotten, Mr. Mann, that the record is replete with my requests for proofs that I have requested, that I have repeatedly requested, that would support the witness' statements that she owns this or the other property. I am, of course, specifically
237 interested, I have previously requested repeatedly, that proofs be presented for my and our examination here, that would support the witness' claim to ownership of the Atlantic Assets Corporation, of Edwagmij, of the Giesemann finkas, and the other foreign properties which she claimed were owned by her but kept abroad in a camouflaged state. The only answer that I can get out of the witness is that she claims those properties and that her statement does not require any proof. She testifies that she has no proofs and that she has given the task to her German and American attorneys to locate the proofs, the whereabouts of which are unknown to her. I am therefore asking the witness once more, to give her this opportunity of producing evidence of her ownership of her alleged camouflaged foreign properties so that we might examine them and question her with respect to them. It seems to me that there is nothing more important relating to this proceeding than to have produced the proof that I have requested.

By Mr. Mann:

> I believe that the record shows, or will show after tomorrow morning's session, that each time you have made an oral production request we have complied with it or we have told you that such was not in the petitioner's possession. Now, I ask that you in lieu of making another time consuming speech, be good enough to specify the documents or other evidence for which you would like us to conduct a search.

At pp. 33-34 of the Hamburg record, Mr. Albrecht repeated these requests and himself characterized them as follows:

> On September 27th I requested of the witness the production of the investigations conducted from 1950 to date on the basis of which she filed her latest claim in February 1955 with the Office of Alien Property. Perhaps I may have expressed myself differently on that to the effect that on the basis of such investigations the witness filed a copy of the claim filed with the Office of Alien Property with the German Tax authorities.
>
> On the same day I made a blanket request of the witness for the production of all her proofs of ownership of the camouflaged foreign property which she claimed to own. The witness agreed to attempt to comply with this request, but asserted that she was unable to say whether she would be able to do so.

And, after making and repeating further requests, Mr. Albrecht stated (p. 34, Hamburg record):

> I probably need not repeat that unless some of this very important documentation is produced I shall be severely handicapped in completing my cross-examination of the witness, and if this handicap continues I shall, of course, regretfully have to reserve all my rights in the premises for the protection of the interests that I represent.

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I cite these, no as isolated instances, but as typical of the pattern pursued by Mr. Albrecht. Thus, if Mr. Albrecht did not complete his cross-examination, it was not because he did not have ample time and opportunity to do so, but because he misconceived the function of a depo-

sition, in general, and the role of cross-examination in particular. His constant, day-to-day, indiscriminate demands for the production of documents and more documents, some with more or less particularity, and others, to use his own expression, in "blanket" form, were not based upon any subpoena duces tecum or Order "of the character provided for" by Rule 34 as envisaged by Rule 27(a)(3). Accordingly, his demands for documents took up time that could have been otherwise utilized, invited long colloquies between counsel that could have been avoided, and resulted in undue harrassment and oppression of the petitioner. All of this could have been avoided if prior to August 15, 1955, the date originally scheduled for the commencement of petitioner's deposition in the Order of July 11, 1955, Mr. Albrecht had proceeded under Rules 27 and 34 and thus notified us of the documents he wanted produced. Instead, as Mr. McMahon informs us in his affidavit of September 19, 1955, Mr. Albrecht sailed for Europe on July 16, 1955, five days after the entry of the Order of July 11, and a month, short a day, before the taking of petitioner's deposition was scheduled to commence. Indeed, as it turned out just two days after Mr Albrecht sailed, the commencement of the taking of the petitioner's deposition had to be postponed to August 30 because of her health. At no time between July 11, 1955, when the Order granting the petition herein was entered on consent, and August 30, 1955, when the taking of petitioner's deposition actually began, did Mr. Albrecht, formally or informally, request us to produce any documents at the deposition. Yet, as it turned out, that formed a major part of Mr Albrecht's "cross-examination".

IV

The transcripts of petitioner's deposition cover 366 pages and are comprised, according to the stenographer's count, of 114,823 words. It
239 is therefore virtually impossible without overburdening the Court, adequately to portray in this affidavit the unduly oppressive manner in which Mr. Albrecht conducted his cross-examination, apart from his insatiable demand for documents. A few examples may, however, suffice.

Thus, at pp. 41, 42 of the Hamburg record the following appears:

Q: * * * Let me ask you whether at any time since the filing of this tax declaration you have filed an amendment with the tax authorities to include your alleged camouflaged foreign property.

A: I think I did already make it quite clear that by copy of my claim I informed all concerned that my tax declarations filed by me up to 1955 were not correct by handing them over these copies of my present claim.

Q: Well then, your answer is, is it not, I am sorry I have to say it, that your tax declaration (Wagenknecht's Exhibit 11) is a fraudulent report, is it not?

A: I regret not to be able to follow your view of the matter for a tax declaration referring to a particular company - in this case the community of heirs (Erbengemeinschaft) of the Coupienne estate - which apparently has nothing to do with my personal property, apart from the minute, the preposterous tiny little share which I had in this community of heirs at all, as I was no direct heiress, but only by means of the small share of my son Edmund, who long before had already gone out of it, but what has that to do with my personal property which had been administered in quite a different place and which had been accounted for quite otherwise, I mean to say what has this to do with this tax declaration?

Q: Mrs. Stinnes, you haven't answered my question, and I shall ask Miss Korner to read it again.

A: I gave you my view as to that matter, and I have nothing more to say about it, Mr. Albrecht.

Q: Well then, do you say it is a fraudulent or is it not a fraudulent tax declaration?

A: I have nothing more to say about that indeed.

By Mr. Albrecht:

Mr. Mann, would you be good enough to ask Mrs. Stinnes to give me an answer to my question.

By Mr. Mann:

Mr. Albrecht, it seems we are spending quite a bit of time on these

matters which have been hashed and re-hashed on numerous occasions in this record. I believe the witness has today answered you. question with the general statement which she made a few minutes ago

240 By Mr. Albrecht:

I am not interested in any general statement which the witness might make. I have addressed the simple question to her to find out whether she characterizes her tax declaration as fraudulent or not fraudulent, and I think I am entitled to a "yes" or "no" answer to that question, and I must ask you to be good enough to instruct the witness to answer my question

By Mr. Mann:

Mr. Albrecht, I really don't understand why you persist in this. The witness has testified all of her tax declarations for a number of years were false in that she did not show her camouflaged foreign holdings If you wish to characterize those returns as fraudulent- do so In my opinion the witness has answered your questions not only on this occasion, but also on several prior occasions.

Then Mr Albrecht asked petitioner about another tax return, and the following appears at p 43 of the Hamburg record:

Q: Is that a correct tax declaration?

A: Neither the Legal Department nor the Finance Department were in the position of preparing a more accurate and a better declaration, as the Finance Department didn't know anything about the camouflaged property This so far I know has already several times been brought to the minutes

Q: And to the present day neither your Finance Department nor the Legal Department have been informed that you claim certain camouflaged foreign property? Is that not so?

A: That I do not know, and I cannot say anything about it.

Q: But this declaration shows that you signed it on March 22, 1955, and you now mean to say, do you, that up to that date you had not informed your Director of Finance nor your Director of the Legal

Department that you claim certain camouflaged foreign property, is that so?

A: I did already answer that I do not know whether they got advised or not, and I just want to add what should I bother these gentlemen with this matter at all. They cannot possibly be helpful about that, and in these times of ours their work is so difficult already and these gentlemen are so overworked that speaking from a humanitarian point of view it would rather appear a crime to bother them with this matter, and even to inform them about it.

Q: Then you are content that your employees continue to prepare and file fraudulent tax declarations on your behalf, is that humanitarian?

Later, at pp. 47, of the Hamburg record, Mr. Albrecht cross-examined as follows:

241 Q: Did your son Otto tell you what property Mrs. Wagenknecht claimed in the claim filed in Washington?

A: As to that I cannot give any definite statement either. Maybe Otto told me something, perhaps he gave me some details only. I only know that when I heard about the claim of my sister-in-law I said that I would not be interested in a thing like that, as I do not bother about the doings of criminals against me. A similar opinion I uttered and I acted accordingly when I received these claims, I think they were five -- one of them being withdrawn in the meantime -- through the German Court. I put them back in an envelope without taking notice of it and I passed them on. I do not want to get to know about these claims at all. I am already quite fed up with the excitement caused by this. I do not want to have anything to do with these other affairs. My point if you are interested in it, Mr. Albrecht, is this: I honestly believe in the German proverb which runs to the meaning: Time brings everything to light.

Accordingly I told my son Otto that he should me advise about this claim as little as possible. My attorneys would already know what they should do about it.

Q: I am sorry to have to say it; Mrs. Stinnes, but you see you adopt a

very high moral tone as against Mrs. Wagenknecht, and you call her a criminal, now it seems to me that the filing of fraudulent tax returns for 30 years is also a criminal matter, isn't that so?

A: If you want to stigmatize that as a criminal affair -- my camouflaged property and my attitude toward the taxation authorities about it -- I cannot defend myself to that. This I sufficiently expressed in my testimonies why in those days it was simply necessary in Germany and for the Germans in order to save certain property to have them camouflaged like that, therefore, this expression of yours will not hit me, but I think that any righteous person will not compare this attitude of mine, which after all had been initiated by my husband and then largely continued by my son Junior. I said compared to the attitude of a person about whom it can be proved and that I did prove, and I shall immediately give you a further proof which I recollected in the meantime, a person of whom it can be proven that when she came to Mexico didn't own a red penny, the husband of whom had been my trustee to whom I had entrusted considerable property and who held it accordingly -- that out of the income of the trust-property which income can be proved -- he bought some little property for himself I never resented, on the contrary, that I deemed a justifiable reward for his work for me. But he did never go beyond that. I did already mention that if he had been alive and his wife would have suggested to him to act as she herself had been doing, I think he would have divorced her immediately -- I stress immediately -- him, my reliable trustee I lost -- and with him the substance the 50% - percent-participation in the Giesemann Fincas, the money my sister-in-law got out of it, I can claim back from her by legal proceedings at one occasion or
242 other, but that she goes so far as possibly claiming the whole of my inheritance of Atlantic Assets shares and even of Hu[illegible]binnes Corporation shares, if you should not call that criminal I should like to know -- this may not be a criminal affair in the meaning of somebody going to jail -- but above all an unheard break of trust, as a

theft, and this furthermore against her own sister-in-law, to whom she was most highly indebted, on the means of whom she had been living for years, when she and her husband didn't have a penny of their own -- if one should not feel indignant about that and if one should not find words about it like that then I do not know what other expressions to use. This, of course, is not meant against you being her lawyer, but only against your client, to whom I cannot apply another expression. Your question, Mr. Albrecht, just laid yourself open to that, and it was nobody else who put that question to me. * * *

Earlier in Mr. Albrecht's cross-examination, the following occurred (Dusseldorf, pp. 104, 105):

Q: * * * In Mr. Unger's examination to which I have eluded, Mr. Wieferich specifically asked him whether in connection with his duties as director of finance of Hugo Stinnes o. H. he also took care of the financial matters relating to the individual partners of the same, and Mr. Unger gave the following answer: "Yes, the payments which the partners had to make of their household expenses, the purchase of securities, the payment of taxes and the control of their accounts with Hugo Stinnes o. H. and other banks, also all matters relating to the taxes payable by the members, because all figures relating to taxes were given by my to the tax department that handled all tax matters for all the Companies. The man in charge of that tax department, as well as of the legal division, was a gentleman named Dr. Soeller. Together with Dr. Soeller I disposed of all tax matters although I have previously stated all figures in connection with the same were supplied by me."

Now, that is the information I had hoped to get from you and I now ask you whether that statement is accurate?

A: This entire statement by Mr. Unger only confirms what I have answered to your last question that the matter Hugo Stinnes o. H. and family has nothing to do at all with the complex with which we are dealing here.

Q: Well, whether that is so or not, will you please answer my question.

A: Mr. Unger stated that my tax affairs and those of the other partners were dealt with by him together with the tax department -- that is correct.

Q: But Mrs. Stinnes, we can dispose of this matter very quickly. You see my question did not relate merely to tax matters. Mr. Unger stated all his functions as director of finance. Now I have asked
243 you whether that statement is correct. Will you not please either say yes or no?

A: I cannot do that because I do not know. I read from this, that this only refers to tax matters. If the concept which Mr. Unger states also refers to other matters, that is something else which I do not know, then I cannot say anything else.

Q: I believe I am able to say that you can answer my question by either yes or no. And may I not suggest that you consult with Mr. Mann as to whether you cannot do so?

- - - - - - - - - - -

By Mr. Mann:

I am afraid I cannot testify as to what the witness' knowledge of the situation might be.

By Mr. Albrecht:

Mr. Mann, I am only asking you to support me in telling your client that I am entitled to a yes or no answer to my question and I wish you would instruct your client accordingly

By Mr. Mann:

I will only tell my client to answer this question to the best of her ability and only insofar as she has personal knowledge.

During his cross-examination, Mr. Albrecht asked the petitioner to have a search made for tax returns filed with respect to her husband's estate, and she said she would. (Dusseldorf record, pp. 114, 115). That was on September 9. On September 12, the following colloquy took place (Dusseldorf record, pp. 121, 122):

By Mr. Mann:

* * * Among other documents you asked for that a search be made for a copy of any inheritance tax return that might have been filed. I am advised that under the laws of Germany in force at the time there was no inheritance tax in the case of one spouse inheriting from another. Accordingly, there was no inheritance tax form to be executed and given to the German authorities. * * *

By Mr. Albrecht:

* * * While I accept your statement that at that time there was no tax payable by the surviving spouse that inherited all of the decedent's property, nevertheless I am informed that when the German state found that no tax would be payable on the estate of Hugo Stinnes, that a law was subsequently introduced into the legislature which became known in popular parlance as the "lex Stinnes", according
244 to which the estate became liable to the payment of taxes and I am informed that a tax was paid and I am informed that a property tax declaration (Vermoegenssteuerbescheid) was filed with the tax authorities. I would ask you therefore if you would be good enough to look in the files of Mr. Stinnes' estate and see whether that tax return and record of the tax paid may be found.

Mr. Albrecht pursued the matter further. Thus, at pp. 126-127 of the Dusseldorf record:

Q: You made the statement, Mrs. Stinnes, that when your husband died statements appeared publicly, I think you said in the obituaries, to the effect that he was the owner of 250 companies. Was that also in your estimation a figure of speech and, if not, is it possible to obtain a list of those companies anywhere?

A: With this statement -- a reference to press reports -- I have only replied to a question which I could not answer. I never thought about it how many firms my husband possessed -- I never counted them.

Q: But certainly such companies as he did own, would necessarily have been included in an inventory of the property included in his estate, whether by way of inventory or by way of a property tax declaration

(Vermoegenssteuerbescheid), would it not?

- - - - - - - - - - -

By Mr. Mann:

I believe that I mentioned earlier, Mr. Albrecht, my understanding that at the time of Mr. Stinnes' death there was no inheritance tax when property descended from one spouse to another. If that understanding is correct there would be no tax declaration, and I believe that the witness has said that she knows of no inventory. Accordingly I would like to suggest that we follow another line of questioning which might be a little more profitable towards bringing this deposition to a conclusion.

By Mr. Albrecht:

Mr. Mann, you have made a statement on the basis of what you have been informed the German law to be at the time of Mr. Hugo Stinnes' death. In rejoinder to your previous statement I have stated what I have been informed happened shortly after Mr. Stinnes' death, so that subsequently it became necessary to file a property tax declaration (Vermoegenssteuerbescheid) and to pay a tax on the estate. My effort is merely a continuing one to obtain at least a few of the statements, declarations, tax returns, inventories, whatever they may have been, in order to get something to start from which would show what the assets of the estate were that this witness inherited, and I have therefore asked you to be good enough, in the light of my statement if that statement is correct, to look once more into the files relating to Mr. Stinnes' estate with a view to locating the papers I have requested.

245 Accordingly, the matter was investigated again, and I advised Mr. Albrecht as follows (pp. 137, 138 Dusseldorf record):

By Mr. Mann:

* * * You will recall that yesterday there was some discussion about the lex Stinnes. At the time I told you that I was advised that there was no inheritance tax under German law, that is in 1924, where the inheritance passes from one spouse to another. I believe

you said that you were advised that a lex Stinnes, so-called, was subsequently passed and that the law did require that an inheritance tax be paid on the Stinnes estate. We have explored this matter further. As a matter of fact we have consulted Dr. Soeller who at the time was lawyer in the Hugo Stinnes G.m.b.H. and Mr. Unger, who is sufficiently identified in the record. They advised that there was no inheritance tax involved on the estate left by Hugo Stinnes since the inheritance went to his wife and that at that time German law required no inheritance tax be paid under such circumstances. While an inheritance tax law which would cover the situation of one spouse inheriting from another was subsequently passed, that law was not retroactive. Accordingly, the position which we took yesterday to the effect that there was no inheritance tax payable on the inheritance which Mrs. Stinnes received as the sole legatee under her husband's will seems correct.

V

Considering the age and health of the petitioner, it would seem clear that merely by reason of its length, Mr. Albrecht's cross-examination has been unduly oppressive. In addition, as an examination of the transcript will show, much of Mr. Albrecht's cross-examination was uselessly spent on just such futile matters as were foreseen at pages 14 and 15 of the supporting affidavit of John W. Pehle, Esq., sworn to September 25, 1955. Thus, Mr. Albrecht spent much time examining petitioner about letters (and one photocopy of "an alleged reconstructed letter" which he spent over half an hour reading to the witness in English and German, see p. 190, Dusseldorf record) which, on the surface, put the ownership of certain property in her late brother. Typical of petitioner's answers and the cross-examination that followed is this (p. 205, Dusseldorf record):

Q: Well, let me show you a photostat of what purports to be a letter dated April 12, 1921, addressed to Consul Edmund Wagenknecht
246 and signed by Judge Thomas and ask you whether that refreshes your recollection?

A: This letter does not shake my recollection in any way. This will be

one of the many letters which had to be written in this matter for reason of camouflaging.

Q: Well, let me ask you again, was Judge Thomas a member of this conspiracy to defraud the German Government out of taxes?

A: You speak again of a conspiracy. I can only repeat what I have just said. Only Mr. Thomas, in case he would at all remember these occurances, would probably be in a position to say what this letter meant.

VI

Mr. Albrecht's cross-examination was also unnecessarily repetitious. However, in order to show the extent of the repetition it would require an analysis of the record which might be almost as long as the record itself. Certainly adequate time was afforded Mr. Albrecht for cross-examination. How he used it is, of course, another matter. He had five times as much time as I used on direct examination (not counting sessions of counsel at which documents requested by Mr. Albrecht were produced). He had ten times as much time as Mr. Wieferich used on his cross-examination. He had over three times as much time as the combined time of my direct and Mr. Wieferich's cross-examinations. Even during the examination in the petitioner's hospital room at Hamburg, when Mr. Albrecht knew that there could be a maximum of six additional sessions (Hamburg Record, pages 18-20) he insisted largely in repeating the cross-examination which he had conducted at Dusseldorf. If the petitioner was not adequately cross-examined it was not because Mr. Albrecht did not have sufficient time.

/s/ James H. Mann
James H. Mann

Sworn to before me this 25th day of November, 1955

/s/ Lorraine D. Basich
Notary Public

My Commission expires June 14, 1958

247

EXHIBIT A

FREIE UND HANSESTADT HAMBURG

UNIVERSITATS-KRANKENHAUS EPPENDORF

Hamburg October 12, 1955.

Certificate.

This certificate is given with reference to my prior certificate of October 1st, 1955 which concerned the

health of Mrs. Clare Hugo STINNES.

On Tuesday October 11th, I met with all the attorneys who are taking Mrs. Stinnes' deposition and explained to them Mrs. Stinnes' condition. I showed them roentgenological photographs to demonstrate the extent to which Mrs. Stinnes' health has deteriorated in the past five weeks since the beginning of the taking of her deposition. Copies of the spot-films are enclosed herewith demonstrating the rapid enlargement and deepening of the ulcer crater (being marked with arrows). This deterioration took place in the course of only five weeks in spite of continued treatment with diet and drugs.

As stated in my earlier certificate, I consider it advisable from the medical point of view to end this deposition with a few short consecutive sessions rather than postpone the examination for the future. I cannot recommend the latter at all, because it would prolong the psychical factor with all the risks of the disease without any doubt. Accordingly, I have permitted the examination to continue in the hospital under my supervision and with necessary arrangements to treat the patient by medical assistance in the case of urgency (perforation or hemorrhage). A treatment with X-ray irridation of the mucous membrane of the stomach was begun October 3rd.

I have seen the order of the United States Court of October 6th, 1955 which I understand permits the deposition to continue until I determine that it should stop for reasons of being prejudicial to Mrs. Stinnes' health. I attended a portion of the two sessions which have been held at the hospital. In my opinion the questioning is detrimental to the patient's health, and, if continued for too long a time, the stress caused by it could

248 result in an urgent complication of the ulcer (perforation or hemorrhage). The perforation would endanger Mrs. Stinnes' life seriously because it would include a surgical intervention. In an age of nearly 83 years the risks of such a procedure are obvious, and equally in the case of hemorrhage.

So I have given Mrs. Stinnes sedatives to relieve the stress, but notwithstanding their effect the examination continues to threaten her health.

Following the first session in the hospital the attorneys asked me to specify the number of examinations which I possibly could permit to take place. It is my opinion and I so advised the attorneys prior to this morning's session, that five daily and consecutive sessions with no more than two hours of actual questioning (including the session held today) would be the maximum which could be held without seriously endangering the health and possibly the life of Mrs. Stinnes, and that I might be required to stop the examination prior to that time should the patient's health demand it. But it is the doctor's opinion that a rapid and uninterrupted run of the action to a definite end would add great help for the cure of the disease.

/s/ Prof. Dr. H. H. Berg
Prof. Dr. H. H. Berg
Dir. of I. med. Univ. Klinik
Hamburg-Eppendorf
Hamburg 20

/s/ R. B. A.
Richard B. Andrews
American Vice Consul

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249 [illegible] Spot film of ulcer

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250 [Filed November 28, 1955]

EXHIBIT B

Hansestadt Hamburg
Universitats-Krankenhaus Eppendorf

Hamburg 20, den
October 16th, 1955

CERTIFICATE.

In this certificate I must refer to the certificates which I have given under date of October 1st, 1955 and October 12th, 1955 which describe the condition of Mrs. Clare Hugo Stinnes.

This certificate is given to attest that I have today ordered that the questioning of Mrs. Stinnes in the taking of her deposition be stopped. She has now been questioned in her bed in this hospital for six consecutive sessions of two hours of actual questioning. The period of mental stress has been even longer, as there has been a recess during the questioning period. In my first certificate I have pointed out, that the recurrences of the disease often could be related to periods of mental stress, and that there exists an international consent among the Gastro-Enterologists, that emotional disturbances play a role in the pathogenesis of the ulcer disease. A well-known scientist of the USA, Stewart Wolf, one of the authors of the work on human gastric function, published recently an impressive chapter on the Role of Stress in Paptic Ulcer (1955). It is my opinion, that the questioning is harmful to Mrs. Stinnes health, and that, if continued, could lead to a deterioration of the ulcer, in spite of the fact, that the treatment (irradiation and drugs and diet) has been continued in the hospital I have also proved the penetrating character of the lesion and stressed the high risks of the two classic complications (perforation, hemorrhage) in the age of 83 years. Also I have mentioned the fact, that Mrs Stinnes belongs to the category, described by E. Libman and B. B. Crohn (New York), which is hyposensitive to pain from the underlying disease. In this group the complications occur insidiously, suddenly, with few or no premonitory symptoms. So I come to the conclusion, that these risks should not be longer continued, and accordingly I have ordered the deposition stopped. My action has been taken with full knowledge of

the United States Court Order, and I have stopped the questioning, because I believe it unduly prejudicial to Mrs. Stinnes health.

I have been asked by the attorneys to state how much time could elapse if it should be decided that the deposition must be continued, before the examination of Mrs. Stinnes could be resumed. It is difficult, at this point, to give an estimate. I am unable to say that, from the medical point of view, I could ever recommend that the deposition be resumed, even if as much as 12 months should elapse. In this connection, I must point at the tremendous increase of the ulcer from the time of Mrs. Stinnes discharge from this hospital to the end of the first five weeks of questioning. And I must emphasize again, that the possibility that the questioning might be resumed at some future date, presents the patient with the psychical factor which aggravates the ulcer and handicaps, or could even prevent the successful treatment of this serious case.

/s/ Prof. Dr. H. H. Berg

/s/ R.B.A.

Richard B. Andrews
American, Vice Consul

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254 [Filed November 28, 1955]

APPLICATION

On the petition herein, the attached affidavit of James H. Mann, sworn to the 25th day of November, 1955, and all of the proceedings had heretofore herein, the petitioner hereby applies for an Order, in accordance with the Order herein dated July 11, 1955, duly entered on consent, determining (a) the amount, if any, of the travel and other expenses incurred by Ralph G. Albrecht, Esq., attorney for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, to be paid by petitioner, and (b) the amount, if any, of the attorney's fees of said Ralph G. Albrecht, Esq., attorney for said Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, to be paid by petitioner, and

requiring said Ralph G. Albrecht, Esq., attorney as aforesaid, to account to petitioner for all sums heretofore paid to him for and on behalf of petitioner in accordance with the said Order herein dated July 11, 1955.

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By /s/ Lawrence S. Lesser
A Member of the Firm

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255 NOTICE

TO: THE HONORABLE THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

You are hereby respectfully requested to calendar the foregoing application for hearing at the same time and place as the petitioner's motion herein duly served and filed September 26, 1955, for an Order pursuant to Rules 27 and 30(d), and referred to in a Notice filed simultaneously herewith.

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 Eighteenth Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner

By /s/ Lawrence S. Lesser

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256 [Filed November 28, 1955]

AFFIDAVIT

CITY OF WASHINGTON)
SS:
DISTRICT OF COLUMBIA)

JAMES H. MANN, being duly sworn, deposes and says:

I am an attorney and counsellor at law duly admitted to practice

before this Court, and I am a member of Pehle, Lesser, Mann, Riemer & Luxford, 1210 Eighteenth Street, N. W., Washington 6, D. C., attorneys for the petitioner herein. I am fully familiar with all the proceedings had heretofore herein, and I make this affidavit in support of the petitioner's application pursuant to the Order herein dated July 11, 1955, for an Order determining the amount of the fees and expenses, if any, of Ralph G. Albrecht, Esq., attorney for Mrs. Elsa W. de Wagenknecht, a resident of Mexico, and N. V. Edmund Wagenknecht's Handelmaatschappij, a Netherlands corporation, to be paid by petitioner, and to require said Ralph G. Albrecht, Esq. to account for all sums heretofore paid to him for and on behalf of the petitioner pursuant to said Order herein dated July 11, 1955.

I

In accordance with the provisions of the Order herein dated July 11, 1955, my firm, under date of July 29, 1955, remitted to Mr. Albrecht a treasurer's check of the American Security and Trust Company, in the sum of $1,000, against his fees and expenses, and receipt thereof was duly acknowledged on behalf of Mr Albrecht under date of August 1, 1955.

257 Further, in accordance with the provisions of said Order herein, I am informed that there has been paid to Mr. Albrecht, also against his fees and expenses, the equivalent of $250 each and every week in the period between August 15, 1955, and October 16, 1955, or the equivalent of a total of $2500.

Mr. Albrecht has thus received a total of $3500 for which he is accountable by the terms of the Order herein dated July 11, 1955. As of the date hereof, Mr Albrecht has neither made nor offered to make any accounting with respect thereto.

II

In considering the extent, if any, to which the fees and expenses of Mr. Albrecht, as attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij in this proceeding, should be paid by petitioner, I believe that the following facts should be taken into account:

1 Mr Albrecht now is and has been continuously since long prior to the commencement of this proceeding on May 13, 1955, the attorney for said Mrs Elsa W de Wagenknecht, in the several capacities in which she is described in the petition herein, and for said N V Edmund Wagenknecht's Handelmaatschappij as well, in connection with claims filed by them with the Attorney General of the United States (Office of Alien Property) for the "return" to them of certain vested property, including property the perpetuation of petitioner's testimony as to her own ownership thereof on the dates of vesting was the purpose of instituting this proceeding

2 Mr Albrecht now is and has been continuously since long prior to the commencement of this proceeding on May 13, 1955, the attorney for said Mrs Elsa W de Wagenknecht in four actions, all pending in this Court (Nos 1734-52; 4920-52; 1474-55, 1475-55) instituted by her against the Attorney General of the United States for the "return" of certain vested property, including property the perpetuation of petitioner's testimony as to her ownership thereof was the purpose of this proceeding On August 13, 1954, consent orders were entered in the first two of such actions, to neither of which has petitioner ever been a party, authorizing the taking of petitioner's deposition therein I am informed that even prior thereto and in or about July, 1953, efforts had been made in connection with such litigation to examine the petitioner I am further informed that subsequent efforts in or about September, 1954, to examine petitioner were held equally unavailing

3 In the light of the foregoing, when this proceeding was instituted my firm, as attorneys for the petitioner, caused the petition, which named said Mrs Elsa W. de Wagenknecht and N V. Edmund Wagenknecht's Handelmaatschappij (both of whom are non-residents of the United States) among the expected adverse parties, as well as the notice of hearing thereon, to be served on Mr. Albrecht in the belief that, under the circumstances, he either had or would secure his clients' authority to accept such service on their behalf We

were, however, in error for, on the return date, Mr. Albrecht appeared before Judge Curran and testified that despite his representation of Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij in the aforementioned claims proceeding and litigation and the efforts made in connection with the latter to examine petitioner, he was not authorized by his clients to accept service on their behalf. With the matter in this posture, it was evident that service in the manner described in Rule 4(d) could not be had with due diligence, and that, in consequence the
259 Court might, under Rule 27, "make such order as is just for service by publication or otherwise". In such case, however, Rule 27 provides that the Court "shall appoint for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and in case they are not otherwise represented, shall cross-examine the deponent". Accordingly, after Mr. Albrecht testified that he was not authorized to accept service on behalf of his clients, Judge Curran addressed him as follows from the bench:

> THE COURT: Of course, the rules provide that if such service cannot be had with due diligence, the Court may make such order as is just for publication or otherwise and shall appoint for persons not served in the manner provided in Rule 4(d) an attorney who shall represent them.
>
> I take it you don't want me to appoint another attorney to represent the two that you represent

Mr. Albrecht replied: No, sir.

Accordingly, we were instructed by Judge Curran as follows:

> THE COURT: Very well. You draw an order wherein the Court, because service cannot be made with due diligence in this case upon the two expected adverse parties that have been named in the petition, will direct that service be made by registered mail to their addresses in Mexico and Holland; and I will appoint Mr. Albrecht as counsel to represent the two adverse parties that we have been discussing. * * *

In accordance with such instructions, we prepared and Judge Curran signed the Order herein dated June 13, 1955, which, after reciting the attempted service on Mr Albrecht and the gist of his testimony, authorized service on Mr Albrecht's clients by registered mail and personal delivery abroad, and appointed Mr Albrecht as his clients' attorney in this proceeding "within the meaning of Rule 27(a)(2) of the Federal Rules of Civil Procedure"

4. Under date of June 29, 1955, Assistant Attorney General Dallas S Townsend, Director of the Office of Alien Property, addressed a letter jointly to us and Mr Albrecht, reading as follows:

> We have been served with notice that on July 11, 1955 Mrs. Hugo Stinnes, Sr., will apply to the United States District Court for the District of Columbia for an order authorizing the taking of her own deposition upon oral examination for the purpose of perpetuating her testimony. As you recall, at the previous hearing before Judge Curran on June 8, 1955, in this matter the Attorney General of the United States appeared and consented to an order for the perpetuation of petitioner's testimony provided that it could be done on or about July 1, 1955, and petitioner would undertake to make herself available at a specific place on that date Obviously, it is impossible now to adhere to that schedule and we, therefore, take this opportunity of giving all parties in interest our views in advance of the hearing of July 11, which views we shall communicate to the Court at that time
>
> In connection with our vesting of the Stinnes properties we presently have pending in the District Court in this jurisdiction two suits against the Attorney General of the United States as successor to the Alien Property Custodian brought by Mrs Wagenknecht and certain co-plaintiffs seeking the return of approximately $1,200,000 An offer of settlement has been made by the plaintiff in those actions and the Attorney General of the United States notified the plaintiff that such offer could only be acted upon after the deposition of Mrs. Stinnes was taken and reviewed. Chief

Judge Laws was informed of this at the pre-trial hearing in these cases in February of this year and stated that the parties would be given until October to take the deposition and accept or reject the offer of settlement -- otherwise the cases would be set for trial in October.

In addition, both Mrs. Wagenknecht and Mrs. Stinnes have filed a number of administrative claims for the return of vested property and with respect to the majority common stock of Hugo Stinnes Corporation which has a present market value of approximately $15,000,000 these claims of Mrs. Wagenknecht and Mrs. Stinnes appear to be in conflict. As you know, counsel for the Attorney General attempted to take the deposition of Mrs. Stinnes in the pending litigation in Europe in 1953 and in 1954 but on neither occasion was Mrs. Stinnes available. After the Attorney General's decision to require the testimony of Mrs. Stinnes before evaluating the offer of settlement all parties in interest were informed of his desire to take the deposition immediately and, in fact, a tentative date of April 20, 1955 was fixed. On April
261 1, 1955, however, counsel for Mrs. Stinnes received a cable from her stating that she was unable to testify because of illness and suggesting that it be delayed until July; at the same time counsel for Mrs. Wagenknecht refused to stipulate to the proposed petition to perpetuate Mrs. Stinnes' testimony. Thereafter the pending proceeding to perpetuate Mrs. Stinnes' testimony was begun and counsel for Mrs. Wagenknecht has objected both to the service of process and also to the jurisdiction of the Court. It is apparent that these proceedings may be lengthy ones and that in any event they may well be incomplete and no testimony taken prior to October.

You will appreciate that it would be intolerable for the Attorney General of the United States to go to trial in October lacking important testimony because of a conflict of views between yourselves as to the propriety of perpetuating testimony; and yet,

subsequently, be compelled to take that same testimony in administrative proceedings or after the proceedings on the petition to perpetuate have been finally determined. The only interest of the Attorney General of the United States is to secure this testimony promptly. We are prepared to stipulate with either party, or both, that if the sworn testimony of Mrs. Stinnes can be taken in the near future before the United States Consul in Dusseldorf, Germany, which we understand is her home, that testimony, insofar as it is relevant, competent and material, may be used in any proceeding under the Trading with the Enemy Act, judicial or administrative, to which the Attorney General is a party.

We, therefore, take this opportunity of notifying you that pursuant to the powers vested in the Attorney General of the United States and in myself under the Trading with the Enemy Act, as amended, we are requiring Mrs. Stinnes to appear before the United States Consul at Duesseldorf, Germany on August 1, 1955 for the purpose of giving sworn testimony relating to the claims which she has filed with this Office and for the purpose of giving sworn testimony with respect to the issues in the pending litigation brought by Mrs. Wagenknecht. Your attention is specifically called to the following provision of the Rules of Procedures for Claims of the Office of Alien Property (Code of Federal Regulations, Title 8, § 502.25(g)).

> (g) A claim shall be deemed abandoned when after request to do so the claimant has not furnished relevant information in support of his claim, or where by virtue of his failure to respond to inquiries regarding the claim it appears that he does not wish to pursue it further. The Hearing Examiner may on his own motion dismiss a docketed claim as abandoned when the claimant fails to produce any information or document ordered so produced by the Hearing Examiner.

We are not, of course, opposed to the present petition to perpetuate and if the Court is disposed to order the perpetu-

ation we see no reason why it cannot be done on August 1, 1955. In any event, however, for the reasons which we have discussed above you are advised that we intend to proceed under our administrative powers to take the testimony on that date.

If you have any questions concerning this matter or wish to arrange details for the convenience of counsel, please communicate directly with Messrs. James D. Hill, or Robert Wieferich of my staff.

This letter was received by Mr. Albrecht and my firm prior to the entry of the Order herein dated July 11, 1955, granting the petition herein, and before any agreement had been reached with respect thereto between my firm, as attorneys for the petitioner, and Mr. Albrecht, as attorney for Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij.

Under the circumstances, it would appear clearly that Mr. Albrecht's "appointment" by Judge Curran, attorney in this proceeding for his own clients, was in their interests, and not necessarily in the interest of the petitioner. It would also appear clearly, in view of Mr. Albrecht's representation of his said clients in the Claims proceedings and litigation above referred to, the Orders in the latter, consented to by Mr. Albrecht, authorizing the taking of petitioner's deposition therein, and Assistant Attorney General Townsend's letter of June 29, 1955 to Mr. Albrecht and ourselves, that Mr. Albrecht's participation in the taking of petitioner's deposition was largely in the interests of the claims both his clients have pending before the Office of Alien Property, and the actions one of them has pending against the Attorney General in this Court, and not necessarily in the interest of the petitioner or this proceeding.

Furthermore, as the Court commented in the course of the argument of Mr. Albrecht's motion to increase the amount of the security for his fees and expenses prescribed by the Order herein dated July 11, 1955 (pp. 23, 24, 28):

263 THE COURT: Aren't some of his attorney's fees to come from his own clients?

MR McMAHON Your Honor, I don't know

THE COURT: Well shouldn't they?

MR. McMAHON I would assume that insofar as * * *

THE COURT He is acting in adverse interest, of course, to this lady.

MR. McMAHON Yes, Your Honor. * * *

* * * *

THE COURT: Of course, here is one point you have to bear in mind, I think, Counsel. That is, that his cross examination, from his viewpoint, properly so, -- it may be entirely proper -- may be prolonged for the very reason that he is bringing out matters not to the interests of Mrs. Stinnes.

MR. McMAHON I should hope so, Your Honor. That is what he is there for.

THE COURT: But for the interests of his own client. And for that extra, prolonged cross examination, it would seem to the court that his own client ought to be paying for that.

MR. McMAHON Your Honor, if that is so, the court can fix it when the time comes.

THE COURT: Then, you shouldn't be entitled to greater security for that protection which he is going to get from his own client.

Finally, it should be pointed out to the Court that there may be serious question as to whether Mr. Albrecht went to Europe primarily for this proceeding. Thus, by the terms of the order herein dated July 11, 1955, the deposition of the petitioner was to commence on August 15. Mr. Albrecht, however, sailed from New York on the S. S. Liberte on July 16, 1955, a full month less a day before petitioner's deposition was to commence. Furthermore, just prior to the actual commencement of the taking of petitioner's deposition on August 30 lawsuits were filed in a German court against the petitioner herein on behalf of Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, Mr. Albrecht's clients. In their complaints they referred to the claims they had filed with the Office of Alien Property, the claim which petitioner has filed with

the Office of Alien Property, copies of which were attached thereto, and requested that it be adjudged and decreed that petitioner's claim was false.

264 I have no knowledge of the extent, if any, of Mr. Albrecht's participation in the preparation of these lawsuits, but I have been informed by a responsible officer of the Office of Alien Property that the Office of Alien Property, at Mr. Albrecht's request furnished him with a photocopy of petitioner's claim. I can but suggest the appropriateness of inquiry being made by the Court in this proceeding of the extent, if any, to which Mr. Albrecht participated in these matters, and perhaps in others, while abroad ostensibly for this proceeding.

Accordingly, it is respectively submitted that the major portion if not all of Mr. Albrecht's fees and expenses should be paid by his clients and not by the petitioner

/s/ James H. Mann
James H. Mann

Subscribed and sworn to before me this 25th day of November, 1955.

/s/ Lorraine D. Basich
Notary Public

My Commission Expires June 14, 1958.

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265 [Filed December 13, 1955]

AFFIDAVIT OF ROBERT J. WIEFERICH IN SUPPORT OF PETITIONER'S MOTION TO TERMINATE THE TAKING OF HER DEPOSITION

District of Columbia: SS

Robert J. Wieferich, having been first duly sworn, deposes and states as follows:

1. That he is an attorney in the Office of Alien Property, United States Department of Justice, Washington, D. C., regularly assigned to represent the Attorney General of the United States and Atlantic Assets Corporation in this proceeding; that he has appeared heretofore in this proceeding and is familiar with all of the proceedings which have taken place since the filing of the original petition to perpetuate the testimony of Mrs. Claere Hugo Stinnes;

2. That on July 11, 1955, an order was entered by this Court, con-

sented to by affiant on behalf of the Attorney General of the United States and on behalf of Atlantic Assets Corporation, authorizing the petitioner to perpetuate her testimony, further that affiant on August 5, 1955, pursuant to the order of July 11, 1955, went to Europe for the purpose of attending the deposition of petitioner and cross examining the said petitioner.

3 That the direct examination of the petitioner by her counsel was commenced on August 30, 1955, before the United States Consul at Duesseldorf, Germany, and continued from day to day with cross examination by affiant and by Mr. Ralph G Albrecht, representing Mrs. Elsa W de Wagenknecht and N. V. Edmund Wagenknecht Handelmaatschappij, in that
266 sequence, until October 5, 1955; that the examination of said witness because of her age and health was confined to approximately two and one-half hours each day on an average of four days per week during that period, that the direct examination by petitioner's counsel comprised sixty-three pages of the resulting transcript, the cross examination by affiant comprised twenty seven pages of the resulting transcript and the cross examination by Mr. Ralph G Albrecht comprised two hundred pages of the resulting transcript;

4. That thereafter the petitioner entered the University Hospital in Hamburg, Germany, and pursuant to another order of this Court dated October 6, 1955, the examination of the petitioner was continued in the petitioner's room in the University Hospital in Hamburg, Germany, commencing on October 11, 1955, and concluding on October 16, 1955; again, because of the age and health of the witness, each day's examination consisted of approximately two and one-half hours of examination; that all of the period from October 11, 1955, until October 16, 1955, was utilized by Mr. Ralph G Albrecht in further cross examination of the petitioner; that petitioner's doctor on October 16, 1955, concluded that the petitioner could no longer testify because of her health and the parties thereupon reserved their rights and returned to the United States;

5. That by reason of the foregoing sequence of events, it was not possible for petitioner's counsel to conduct re-direct examination of the petitioner, nor was it possible for affiant on behalf of the Attorney General

of the United States and Atlantic Assets Corporation to conduct re-cross examination of petitioner, particularly with respect to all of the examination by Mr. Ralph G. Albrecht which occurred after affiant's original cross examination and which constitutes the bulk of the transcript of testimony;

6. That affiant urges the Court that it appears useless to attempt to continue this deposition in view of the doctor's certificate dated October 16, 1955, which concluded that the petitioner's health would not allow her to testify further;

7. That each of the parties has had an opportunity to examine the petitioner on the principal matters of controversy existing between them, and that Mr. Ralph G. Albrecht, representing Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht Handelmaatschappij, had at least three times as much opportunity to examine the petitioner as petitioner's counsel and affiant together;

267 8. That if the petitioner's deposition is not terminated, her inability to testify further means that the expense and trouble incurred by the parties in proceeding to Europe and examining petitioner over a period of several months will have been in vain and the testimony of an important witness which affiant intends to offer in pending litigation in this Court will be lost;

9. That in view of the foregoing, affiant urges that the general rule of law under the Federal Rules of Civil Procedure and one certainly within the discretion of this Court is that the deposition should be terminated because the examining parties had "a fair opportunity to go into the matters in controversy" (See Moore's Federal Practice, Vol. 4, 2d Ed. p. 2051); affiant further urges that the circumstances described above which render petitioner's deposition incomplete in certain respects may properly be called to the attention of the Court at such time as any party offers the deposition in evidence as circumstances which affect the weight to be given the petitioner's testimony.

/s/ Robert J. Wieferich
Robert J. Wieferich

Subscribed and sworn to before me this 12th day of December, 1955.

/s/ Annetta Woldar
Notary Public

269 Filed December 19, 1955

AFFIDAVIT SUBMITTED IN OPPOSITION TO PETITIONER'S MOTION TO TERMINATE THE PERPETUATION OF PETITIONER'S DEPOSITION ABROAD

STATE OF NEW YORK)
ss
County of New York)

RALPH G. ALBRECHT, being duly sworn, deposes and says:

I am an attorney and counsellor at law, a member of the bar of the State of New York and a partner in the firm of Peaslee, Brigham, Albrecht & McMahon, 501 Fifth Avenue, New York 17, New York.

On June 13, 1955 by an order signed by Judge Curran I was appointed attorney for Mrs. Elsa W. de Wagenknecht, a citizen and resident of Mexico, and N. V. Edmund Wagenknecht's Handel Maatschappij, a Netherlands corporation, named in the petition herein as expected adverse parties, to represent the same in connection with the perpetuation of the non-resident alien petitioner's deposition abroad.

This affidavit is submitted on behalf of said expected adverse parties in opposition to petitioner's motion to terminate the perpetuation of her deposition abroad which was directed to be taken by the order of Judge Morris entered July 11, 1955.

270 In her petition to perpetuate her testimony under Federal Rule 27 of Civil Procedure, Mrs. Stinnes, who as a national and resident of Germany is a non-resident of the District, states that she is over 82 years old and in frail health (par. 12), and alleges the following additional facts in support of her petition. Mrs. Wagenknecht, the said Dutch Corporation and others at various times had filed notices of claim with the Office of Alien Property, Department of Justice, for the return of property vested by the Attorney General under the authority of the Trading with the Enemy Act. Subsequently on February 8, 1955, the petitioner, Mrs. Stinnes, had filed a similar notice of claim with respect to substantially all of the property previously claimed by Mrs. Wagenknecht and the said Dutch Company. In case the vested property should be returned by the Attorney General to any of the expected adverse parties, the petitioner "expects to bring one

or more actions against the persons, firms or corporations to whom such return is made, to establish her right, title and interest thereto and to recover the same, and the subject matter of petitioner's expected actions will be the unlawful withholding from her of said properties." (Petition, par. 9)

The facts which petitioner desired to establish by her testimony are as follows (Petition, par. 10):

(a) that petitioner is the widow and residuary legatee of the late Hugo Stinnes, Sr.;

(b) that all or substantially all of the properties vested as aforesaid were included in the residuary estate of said Hugo Stinnes, Sr., were the proceeds or increment of such property, or were otherwise directly or indirectly beneficially owned by petitioner on the dates of the vesting thereof.

271 Petitioner's attorneys claimed to be unable to produce Mrs. Stinnes, a resident of Mulheim, Germany, within the jurisdiction of this court and proposed instead to take her deposition abroad. They solicited the consent of counsel to that end but refused to agree to bear the expenses of the expected adverse parties in connection with the perpetuation of Mrs. Stinnes' deposition abroad, in complete disregard of the fact that petitioner is a German national and non-resident of the District, and the fact that Mrs. Wagenknecht had no interest whatever in perpetuating the test imony of Mrs. Stinnes, whose interest was now completely adverse.

Petitioner's attorneys at first refused to recede from their refusal to pay the expenses of the expected adverse parties, and on or about May 12, 1955 filed the petition herein under Rule 27 for the perpetuation of petitioner's testimony. Subsequently, however, they changed their position and on July 11 reached an agreement with counsel for all expected adverse parties that provided that the deposition of petitioner be taken in Dusseldorf (a short distance from her home in Mulheim), that it commence on August 15, and that petitioner would bear all expenses of her deposition including my travel and other expenses and an attorney's fee for my services. This agreement was incorporated in an order to which all parties

consented and which was signed on July 11 by Judge Morris.

On July 19 my office was informed by petitioner's attorneys that Mrs. Stinnes was "now hospitalized until August 20", that her deposition would have to be postponed until August 30. Our consent to such postpon-
272 ment was given and subsequently confirmed by stipulation dated July 21.

The taking of deposition commenced on August 30. In consideration of petitioner's age and the fact that she is a chronic sufferer from gastric and duodenal ulcers, and had just been discharged from one of her periodic treatments at the University Hospital in Hamburg, when petitioner deposed at the American Consulate General in Dusseldorf, it was agreed that her testimony would be taken from day to day, from approximately 3:00 P.M. until 5:30 P M., with a fifteen minute recess at the end of the first hour of examination. This recess gradually became longer and finally extended for about thirty minutes each day. After petitioner left Dusseldorf to resume her treatments at the University Hospital in Hamburg under Dr. H. H. Berg, an internationally recognized authority on gastro-enterology, in whose continuous care she has been for her ailment for 29 years, she continued her deposition in her hospital room there for from two to two and one-half hours each day, commencing about 10:30 A. M. and interrupted after an hour by a substantial recess.

It is obvious from the above that petitioner has suffered from ulcers for a very long period of time. Her frail health therefore was not brought about by her deposition, although it was undoubtedly aggravated by the strain and excitement of testifying. However it is the fact that it was the petitioner herself who sought to perpetuate her testimony. Any adverse effect on her physical condition that may have resulted from her deposition was therefore brought about by her own initiative. Hence she herself must within reasonable limits bear the responsibility of any increased disability that resulted to her from the taking of her testimony.

273 It is our earnest submission that a reading of the transcript of petitioner's testimony will show beyond doubt that throughout my cross-examination of Mrs. Stinnes she has been treated with all the respect and

courtesy to which an elderly lady is entitled at the hands of examining counsel discharging his responsibility (Vide e.g. my statement to petitioner, Dusseldorf transcript, p. 91).

In view of petitioner's limited knowledge of English, she requested to be examined in German. This procedure required, therefore, after a question was asked in English, that it be translated into German. Thereupon the witness replied in German, and her answer was then translated for the record into English. The cross-examination of an elderly woman in frail health, conducted through an interpreter, is at best an arduous and time-consuming procedure.

Moreover, throughout her deposition, petitioner required the use of a hearing aid to overcome her deafness. The combination of her impaired hearing and her frequent inability to hear the question for one reason or another, or to comprehend the same when her mind wandered in the course of the examination in Hamburg during which sedatives were administered to her, repeatedly slowed up her deposition and also made necessary the repetition of the question asked, before an answer could be elicited from her, and this answer frequently unresponsive. In other words, the effective time of counsel to ask questions was cut in half, and even more, so that it may be fairly submitted that my cross-examination of the witness

274 each day was the equivalent of what would be perhaps only one hour's questioning of an average witness, or a total of 19 hours for my entire cross-examination to October 16.

On September 27 petitioner's attorneys announced that upon the orders of her physician, petitioner would be available for only one additional session and that the examination would be recessed the following day until October 5 to permit petitioner to depart for Hamburg for further examination by Dr. Berg.

On October 2, petitioner's attorney advised me that he had been informed that Dr. Berg had recommended a six to twelve months' suspension of the deposition unless it could be completed in a few sessions at the hospital in Hamburg. On the following day, petitioner's attorney stated that Dr. Berg would allow petitioner to be questioned for only five or six more

sessions Counsel met on October 11 with Dr Berg who subsequently confirmed that he would allow the further examination of petitioner to continue for only six sessions In the course of these six sessions I continued my cross-examination of petitioner, and when her deposition was stopped by Dr Berg, I had not completed my cross-examination The petitioner's deposition has therefore not been completed.

The above recitals are indicative of the various factors which contributed to a substantial extent to making the cross-examination of petitioner an arduous undertaking, and which made it impossible for counsel to conduct petitioner's examination expeditiously day after day until completion. Although the taking of petitioner's uncompleted deposition commenced on August 30 and extended to October 16, the witness actually
275 deposed in Dusseldorf intermittently for a total of only 19 days, viz., on August 30, 31; September 2, 3 (Saturday), 5 (Labor Day), 6, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 26 and 27; and in Hamburg petitioner deposed for a total of 6 days, on October 11, 12 (Columbus Day), 13, 14, 15 (Saturday) and 16 (Sunday)

The actual testimony of the witness was complemented by frequent conferences between counsel, and extra sessions attended only by counsel in the absence of the witness, for the purpose of completing the record of the deposition Such additional sessions included those held in Dusseldorf on September 15, 16, 23, 26, 27, 28 and October 5, and also in Hamburg on October 13, 15 and 17

In passing on petitioner's motion to terminate her deposition, the court must take into consideration the substantial nature of the property interests for which petitioner or her heirs may subsequently institute suit against the prospective adverse parties represented by me These values are substantial and may be estimated at between 15 and 20 million dollars Without going into a detailed discussion of the value of these property interests, it will be indicative of the substantial values involved to point out that the vested property includes

(1) 531,845 shares Hugo Stinnes Corporation which, at the prices quoted on the New York Stock Exchange during 1955, possess a value

of from 11 million to more than 16 million dollars. (Vide p. 5, moving affidavit, where a letter from the Attorney General is quoted which states the value of these shares to be 15 million dollars.)

276 (2) Various debts totaling $2,500,000.

(3) Bank deposits of approximately $150,000, and

(4) Cash amounting to around $1,500,000.

Upon this motion the court will of necessity also consider the issues in dispute between the parties, the legal theories involved and the extent, nature and difficulty of proof of the issues. Upon direct examination petitioner asserted that during the lifetime of her husband, who died more than 30 years ago, a "furtive scheme" was hatched to camouflage all of the husband's assets outside of Germany so that his ownership of them would not be apparent. These properties were stated to include corporate ventures in Holland, Denmark, Switzerland, Sweden, the United States and elsewhere. Petitioner contends that after the death of her husband in 1924 she carried out and maintained the same scheme to camouflage the foreign assets. She claimed that certain persons and corporations were "straw men" or "trustees" who held the alleged camouflaged property for her husband, and later for her. It is substantially this alleged camouflaged foreign property for which my clients have filed claims with the Office of Alien Property in Washington and for which, for the first time, on February 8, 1955 Mrs. Stinnes also filed a claim. Among the alleged "trustees" are Don Edmundo Wagenknecht, a brother of the petitioner, and a Netherlands corporation bearing his name, N. V. Edmund Wagenknecht's Handel Maatschappij, and later, the widow and successor in interest of Don Edmundo, Mrs. Elsa W. de Wagenknecht. These are the prospective adverse parties represented by me in this proceeding, and they contend that the properties in question belonged to Don Edmundo Wagenknecht.

277 In the course of her direct examination Mrs. Stinnes contented herself by making the bald assertion that the said property had belonged to her husband, that its ownership was camouflaged and that she, as sole heir of her husband, was the successor in interest. No effort was made

by petitioner or her attorneys to produce any documentation in the form of a schedule of assets of the husband's estate or otherwise to substantiate petitioner's unsupported story. It is almost incredible, in view of the age of the parties concerned, that a business man of the background of the late Hugo Stinnes, as well as his wife, the petitioner herein, did not take back from the alleged "trustees" some written admission of their trust. Be that as it may, the burden of developing and proving the facts would seem to have been placed with premeditation on me as the attorney for expected adverse parties, as something in the nature of a "surprise." It was my problem therefore in the course of the deposition to negate Mrs. Stinnes' flat assertion of ownership of the property in question. To this end I demanded the production by petitioner of documents which I believed would be helpful in ascertaining the true facts bearing on the principal issue of ownership, and in expediting the taking of the deposition.

Many of these documents were not produced so that I have not yet had the opportunity of cross-examining petitioner on the basis of the same in order to bring out the implausibility of her story and her lack of credibility, as well as to determine whether petitioner comprehended the implications of her unsupported testimony.

Equally if not more important is the fact that this testimony of petitioner was in direct conflict with the prior depositions of (1) her son, Hugo, who as his mother's attorney-in-fact had managed her affairs and
278 the family partnership from the death of his father in 1924 until 1950; (2) her son Otto who succeeded his brother Hugo in 1950 and still is his mother's attorney-in-fact; and (3) Wilhelm Unger, the long-time director of finance of the Stinnes family partnership and business enterprises. These depositions were taken in 1953 and 1954 on behalf of the expected adverse parties herein, in Civil Action No. 1734-52 and Civil Action No. 4920-52 pending in this court. These are suits brought by Mrs. Wagenknecht under Section 9 of the Trading with the Enemy Act, for the return of her property interests vested by the Attorney General, and now also claimed by the petitioner herein.

Moreover, petitioner's unsupported claim to ownership of my client's

property, supports the defense asserted by the Attorney General to the both Section 9 suits of my client

Under these circumstances, the Court must and should accord counsel for the adverse parties the fullest opportunity, by means of cross-examination of petitioner, to reveal the truth. In such situation, one written document is worth more than reams of testimony, and counsel should be allowed ample opportunity to test petitioner's story against all available written evidence, which in the judgment of counsel will reveal the facts.

It is to be emphasized that the proof of the ownership of the properties in question supplied by petitioner in her testimony is her flat, unsupported assertion that the properties belonged to her husband and to her. The last will of the petitioner's husband (Petitioner's Exhibit No. 1) es-
279 tablished her as his heir; but no inventory, schedule or other list of assets was furnished or offered to support petitioner's claim of ownership. In effect, it was left to counsel for the prospective adverse parties, if possible, to produce the documentary evidence which dealt with these questions. Having been placed in that position, I had no choice but to assume the time-consuming burden of developing the facts by means of the documentary evidence under petitioner's control but which she had not been prepared to offer despite its relevancy

Petitioner's testimony on direct examination was in effect a confession of wrong-doing (Dusseldorf transcript, pp. 59-60) by means of which she hopes to establish title to the property claimed by my clients. Petitioner testified that in 1950 she decided to relieve her conscience of her wrong-doing that began in 1924 and even prior thereto, and that throughout these thirty years she had filed numerous fraudulent tax returns with the German authorities pursuant to the "furtive scheme" that allegedly had been started by her husband to camouflage the true ownership of his property. This extraordinary confession has been made by petitioner and has been perpetuated; yet curiously this testimony has been permitted to stand with nothing to support the oral statement of an elderly frail woman all of whose affairs, property and investments since the death of her husband in

1924 have been controlled and managed by her sons Hugo (until 1950) and Otto (since 1950)

Petitioner's moving affidavit upon this motion argues that, petitioner having confessed her misdeeds, it was improper for me to question her with respect to the fraudulent income tax and property tax returns that had
280 been filed by her We do not concede, of course, that petitioner's tax returns are consistent with the alleged "furtive scheme" to camouflage. And the fact that petitioner admits that her returns are false and fraudulent, does not necessarily mean that there may not be information in the returns which, in relation to the other facts, may show that petitioner's story is without foundation and destroy or throw doubt on her credibility. In any event, it is not for petitioner's attorneys to determine what use may be made by cross-examining counsel of the documentary evidence; and certainly, in the light of the background of this case, we submit that the court should not cut off or limit the right of cross-examination before the effort to examine fully these important issues has been made and completed.

It is our submission, therefore, that it is a matter of legitimate examination to question the witness in order to establish inter alia

(1) that little, if any, action was taken by petitioner after 1950 when she claims she decided to relieve her conscience of her wrong-doing;

(2) that little, if any, action was taken by her son Otto since 1950 in her behalf after he had succeeded his brother Hugo as his mother's attorney-in-fact with full power to act for her in all matters;

(3) the motives that caused petitioner and her son Otto to continue to cause fraudulent property and income tax declarations and returns to be filed after 1950, and as late as March 22, 1955 which was over six weeks after February 8 when petitioner had filed her claim with the Office of Alien
281 Property, for the return of property none of which was ever listed in her property tax declarations and none of the income from which was ever listed in her income tax declarations;

(4) that petitioner and her attorney-in-fact at no time after 1950 had instructed the Director of Finance and the Director of the Legal Department of her family partnership and her business enterprises, that petitioner

had decided to relieve her conscience and that thereafter accurate and correct tax returns would have to be prepared and filed by them and the correct amount of taxes paid thereon.

One of the basic elements of petitioner's story is that her brother Don Edmundo Wagenknecht, the deceased husband of my client who is his successor in interest, was without means, a bankrupt and living on petitioner's charity allegedly at the time when some of the property in question was acquired. Petitioner testified (Dusseldorf transcript, p. 47) that her and Don Edmundo's father, Consul Edmund Wagenknecht, who died in 1922, thought so little of his son's business ability that he refused to appoint him as an executor of his last will and testament, and appointed instead petitioner's husband and the petitioner herself as her husband's successor.

Despite the contention of petitioner's attorneys, it is proper cross-examination to obtain if possible from the witness a retraction of the statements made on direct examination or to show that they are implausible, unsupported by any documentary evidence, and unworthy of belief. A reading and cross-examination petitioner emphatically repeated the above
282 statements and insisted that her brother Don Edmundo had not been appointed executor under his father's will. Only after my repeated questioning of the witness on this point had caused her or her attorneys to suspect a purpose behind my questioning, did the witness finally admit (Dusseldorf transcript, p. 203) that her testimony was false and that Consul Wagenknecht had appointed Don Edmundo as one of the two co-executors of his estate.

My efforts to obtain a similar retraction of her unsupported statements that her brother at no time was possessed of substantial means, have not yet succeeded, even though the witness was shown some documents to refresh her recollection, including a letter-press copy of a hand-written letter addressed to Don Edmundo Wagenknecht in 1922, the handwriting of which she identified as that of her husband and of herself (Wagenknecht Exhibit No. 1; Dusseldorf transcript, pp. 187-9).

Upon direct examination about a dozen exhibits were introduced on petitioner's behalf. With one or two exceptions none of these are of sub-

stantial import Be that as it may, I have not yet had full opportunity to examine petitioner with respect to some of her exhibits directly bearing on the issue of Don Edmundo's means I refer in particular to Petitioner's Exhibits Nos 9, 10 and 11, which are letters between Don Edmundo Wagenknecht, who was then in Sweden, and petitioner in Germany, and between the latter and her daughter Clare-Nore, who resided in Sweden These exhibits were offered to support petitioner's testimony that Don Edmundo received money in Sweden at petitioner's request, who also paid debts contracted by her brother in Germany Cross-examination of petitioner

283 should bring to light that petitioner's interpretation of these exhibits is not in accord with the true facts, which may be briefly stated to be as follows: In view of the inability to transfer funds from Germany to Sweden during the early 1930's, it was difficult for petitioner when residing in Sweden with her daughter, Clare-Nore, to obtain from Germany the funds for which she had need An arrangement was therefore concluded between petitioner and her brother Don Edmundo, at that time a resident of Buenos Aires, whereby the latter caused funds to be transferred to petitioner from abroad, upon her agreement to cause certain advances and payments to be made on his behalf while he sojourned in Europe Periodic settlements of the account between brother and sister followed in due course.

It is also to be noted, in this connection, that Petitioner's Exhibit No 10, which is a letter in the handwriting of petitioner, is corrected in several instances in an ink of another color. The original of this exhibit was not available to me in Hamburg when I required its production, and in view of the purpose for which it had been introduced, it would appear important to question petitioner with regard to the significance of these charges, by whom they had been made, whether they were contemporaneous with the writing of the letter itself, etc

It is of vital importance to the case of my clients to establish that Don Edmundo was a person of substance and wealth and the owner of the properties for which Mrs Wagenknecht and companies in which she owns the beneficial interest, have filed claims with the Office of Alien Property

284 It is therefore essential that I be given further opportunity to continue

my cross-examination of petitioner on this issue.

My repeated efforts in the course of the deposition to obtain the production from petitioner of a statement of the assets or inventory of her husband's estate have proved unavailing. My demands for the production of those documents or any authentic record of the properties owned by petitioner's husband and inherited by petitioner, were met with the statement that a search had been made for the same and could not be found. It is simply not credible that petitioner's records do not include a statement of the assets of her husband's estate. In any event, even if it were assumed to be true that no such record existed in petitioner's files, it would appear that such statement of assets could with slight diligence have been obtained from other sources, e. g., German court records or other files. Petitioner's husband was a leading German industrialist who had created an industrial empire. A record of his holdings and possessions must certainly be available to petitioner, if one is not actually in her possession. It is submitted that under the circumstances of the taking of this deposition the duty and expense of producing such proof is on petitioner. This burden petitioner is apparently unwilling to bear despite the requirement of the order of this court dated July 11, in which petitioner is specifically directed to bear all expenses in connection with the taking of her deposition.

The burden was on me throughout the deposition to develop the facts bearing on this issue. It appears further from petitioner's testimony that
285 shortly after her husband's death her oldest son, Edmund Stinnes, desired to be paid out his share of his father's estate. A substantial settlement was made with Edmund after an arbitration proceeding. Despite my demand for the production of the underlying documents for this settlement, none were produced and petitioner's attorneys merely stated that the same could not be found. It requires no argument to maintain that the file on the arbitration must necessarily have included a list of the assets of the father's estate. Yet petitioner's attorney stated for the record (Hamburg transcript, p. 37) that "petitioner has no reason to believe that such a statement is in existence."

Petitioner's attorneys emphasize the requests for documents made

by me, and without being specific on the point, imply that the requests are improper and that I should have proceeded by application to the Court under Rule 34, and further that I should have requested petitioner to furnish the documentation in advance of the commencement of the deposition. Obviously, I was in no position to anticipate the manner in which the witness would testify on direct, or of the supporting documents she would introduce. The cross-examination, as it progressed, inevitably revealed the existence of and the need for additional documents--as the testimony herein discloses.

It is unrealistic to expect that counsel would know and reveal in advance of the direct testimony of petitioner the lines of cross-examination. The fact is that many documents have been produced by petitioner's attorneys without objection.

286 If it is petitioner's contention that counsel for the prospective adverse parties was not entitled to the documents on request, she could have refused to produce them abroad and required me to make an application to this court. Inevitably, this would have further delayed the completion of the deposition, and all parties realized this and were apparently willing to cooperate to obviate this avoidable result. Thus the demands made for the production of documents were actually in the interest of expediting the deposition. Let it be noted here that my cross-examination was conducted in good faith and not, as petitioner's attorneys charge, to oppress and harass the witness. The transcript itself will substantiate that fact and that at all times the witness was willing and able to testify. I cooperated in proceeding with the hearing whether the day was a Saturday, Sunday or holiday.

A reading of petitioner's testimony in Dusseldorf and Hamburg will confirm the following characteristics displayed by petitioner upon the perpetuation of her testimony, particularly when under cross-examination. Mrs. Stinnes was certainly not cooperative and, in what appeared to be an effort not to develop details with respect to her generalized statements on direct, she professed difficulty in recollecting recent events and happenings, even though upon direct examination she exhibited little doubt as to

the occurrences of 30 or more years ago, and events even prior to the turn of the century. This attitude might be said to betray a certain consistency, therefore, with her failure to produce documents of substantial import that might have contrasted sharply with her bland generalizations. From time to time, instead of answering questions, she would reply that she would have to think the matter over. These questions were invariably left
287 without answer. (Vide e.g. Dusseldorf transcript, pp. 101, 143 and 155). And as the hearings continued, petitioner finally adopted the practice of giving a lengthy recital as her answer to a question. At other times these lengthy answers would be volunteered at the beginning of a day's session and before a question could be put to her. The Hamburg transcript alone will show more than a dozen instances of where petitioner's answers were one-half page in length. Other answers were even longer, and some were actually one and one-half and two pages in length.

The failure of petitioner to reply in reasonably brief form consumed much time, added greatly to the difficulty of the translation, and was undoubtedly largely responsible for the length of her deposition. From time to time attempts were made by me to shorten petitioner's answers by appealing to her attorney to direct his client to give a yes or no answer to which I was entitled. In not even one instance did petitioner's attorney comply with my request.

From the above discussions as well as from a reading of petitioner's testimony it will be apparent to the court that there are important lines of inquiry which have not been completed on cross-examination and others bearing on important issues that have not yet been explored.

A substantial bar to my cross-examination on the important issues that have to be met, was created by the failure of petitioner to produce important documentary evidence that had been requested. Among this documentation are the following:

(1) The statement of assets or inventory of the estate of Hugo Stinnes, Sr., the petitioner's deceased husband, which has already been mentioned;

288 (2) The records of the arbitration court already referred to above, that determined the amount to be paid out to petitioner's son Edmund

Stinnes for his share of his father's estate;

(3) Petitioner's power of attorney to her son, Hugo, under which he acted as her attorney-in-fact from the death of his father in 1924 to 1950. As Hugo Stinnes had previously deposed in 1954 at the request of the Attorney General and myself, and as petitioner's testimony, as pointed out above, is in conflict with her son's deposition, it is of utmost importance to record in this perpetuation proceeding the authority delegated by petitioner to her son, and to question the witness with respect to the same.

(4) Statement of petitioner's personal property holdings that were not included in her capital account in the family partnership. The production of such statement for the year 1924, after her husband's death, for the year 1926 and for a late year, either 1953 or 1954, was demanded. The purpose of this demand was to construct, if possible, a complete list of petitioner's property for the various dates indicated, by combining the list of her private holdings with the list of those with which she was credited by the family partnership (Vide Hamburg transcript, p. 62). The latter list was produced but the former was not. In this connection it should be noted that in the partnership agreement produced by petitioner (Wagenknecht Exhibit No. 20) specific reference appears to the fact that at the time the partnership was formed petitioner did not transfer all of her assets to it.

289 (5) The special report of property holdings required by the Lastenausgleichgesetz, or German law for the "equalization of the burdens." Pursuant to this law both the family partnership as well as the individual partners were required to report their property holdings so that they might be assessed a special capital tax for the benefit of those German citizens whose property had been damaged or destroyed by the war. Neither of these reports was produced. I have been advised by German counsel specializing in tax matters that the final extension of the filing date for these reports under this German law, was December 31, 1954.

(6) The property tax declarations and reports of petitioner from 1926 to the present and the income tax declarations and reports for 1924, 1926 and 1953 or 1954. According to the German practice the taxpayer

fills out and files a tax form known as a Steuererklarung, or tax declaration, and after the tax authorities have audited the same they in turn prepare a Steuerbescheid, or tax return, which confirms the amount of the tax to be paid by the taxpayer. In the case of substantial taxpayers like petitioner there is of necessity always included with a property tax declaration a statement giving the detail of property owned, and with an income tax declaration a statement of the property from which income has been received. Pursuant to my request petitioner produced numerous property tax declarations and reports and numerous income tax declarations and reports, but in substantially all of these cases the important annexes containing the itemization of property were missing. Hence most of these property tax declarations and reports and all of the income tax declarations and reports were altogether useless as evidence and were

290 not offered either by me or the petitioner's attorney. In this connection petitioner sought to make a great showing of complying with my limited request for only three income tax returns (Dusseldorf transcript, top of p. 123) by producing practically every income tax declaration and report from 1925 to the present (Dusseldorf transcript, pp. 177-8). These documents were returned to petitioner and are not included in the record.

(7) Petitioner's last will and testament. Petitioner's attorneys have taken exception to my questions concerning any testamentary disposition made by petitioner of her property and have refused to produce petitioner's will so that she might be questioned with respect to the same. A copy of her will in the German language was briefly exhibited, but no English translation of the same was produced. Such English translation had been specifically requested by the attorney representing the Attorney General (Dusseldorf transcript, p. 232). On October 13 toward the end of the taking of the deposition in Hamburg (Hamburg transcript, p. 36), petitioner's attorney announced that a copy of the witness' will in German had been handed "without comment" to Mr. Dwellie, the American Vice-Consul in Dusseldorf, who in his presence had sealed the same in an envelope and had agreed to attach the same to the original deposition. What

this novel method of handling documentary evidence is supposed to achieve is not understood. The fact remains, of course, that the expected adverse parties are entitled as of right to question petitioner with respect to such disposition of her property that she may have made, with a view of bringing out for the record any inconsistencies with her testimony.

291 (8) Copies of all correspondence and enclosures thereto that passed between petitioner, her son Otto, as her attorney-in-fact, and their lawyer, on the one part, and the German tax authorities, on the other part, to whom, petitioner testified, notice of her fraudulent tax returns had been given shortly after the taking of her deposition commenced. I recall again that it was in 1950, according to petitioner's testimony, that to relieve her conscience she decided to make a clean breast of her fraudulent activities extending over thirty years. As already pointed out, petitioner's story is unsupported by any written evidence. It is of vital importance therefore that full opportunity be accorded me to examine petitioner closely to determine the reasons and circumstances that delayed for the five-year period from 1950 to date, any action on her part to communicate or treat with the German tax authorities.

(9) The partnership agreement of the Stinnes' family partnership known as Hugo Stinnes o. H. Pursuant to my demand an uncertified typewritten copy of such agreement was produced (Wagenknecht Exhibit No. 20). Petitioner's attorney reported that it had not been possible to find a "signed" copy of the same. I submit that this attitude by petitioner is evasive since a certified copy of the partnership agreement could have been obtained from the official Commercial Register (Handelsregister) of the German court in Mulheim.

(10) All proofs of petitioner's alleged camouflaged foreign property holdings in Denmark, Holland, Switzerland, Mexico, United States and elsewhere. The Court's attention is again called to the fact that petitioner's claim, on her direct examination, that she was the owner of various camouflaged properties abroad held in trust for her, is completely un-

292 supported. Her testimony on this point was at all times couched in general statements. Repeated demands made for the production of docu-

mentary proof to support her all encompassing claim evoked the reply that she would try to produce such proof but doubted that she would be able to do so On a later occasion her attorney made the statement that petitioner had complied with all my requests for proof of her camouflaged foreign property However it is a fact that not a single document has been produced and placed in the record that supports petitioner's claim that she is the owner of any property interest for which the expected adverse parties represented by me have filed claims with the Office of Alien Property in Washington and instituted actions that are pending in this court against the Attorney General

(11) Report of petitioner's investigation in 1950-51 which she testified she had handed to her attorneys. It would be of great importance to be able to show by means of this report that no proof had been ascertained to petitioner's claim to the ownership of my clients' property (Hamburg transcript, p 38)

293 On the basis of petitioner's medical history for the past 29 years there is no warrant for concluding that she will not recover after her present course of treatment. It is to be anticipated that petitioner will subsequently be able to complete her deposition There is therefore no element of urgency present that makes it requisite for the court at this time to order that the taking of petitioner's deposition be terminated. On the other hand, there is no basis for any expected adverse party to insist that petitioner's deposition be completed at this time But there is also no possible prejudice to petitioner and to any expected adverse party, if the decision on whether or not to allow the petitioner to be questioned until her deposition has been completed, is deferred until such time as petitioner's physician or other competent medical authority agrees that the questioning of petitioner may with safety be continued.

It is important that the rights of my clients be not cut off at this time. It must be borne in mind that this is a petition to perpetuate the testimony of a prospective plaintiff, who is advanced in years and in frail health She will be of necessity the chief witness for herself as complainant in any action that may be brought against the prospective adverse

parties. In view of her age, this may possibly be the only opportunity that the prospective adverse parties will have to confront this witness. The prospective adverse parties are entitled to a complete and full cross-examination of petitioner, and this is particularly true in the instant case where petitioner's testimony is general, lacking in detail and documentary support, and concerns issues of utmost importance and valuable property interests.

294 It is submitted that petitioner's motion to terminate the taking of her deposition should be denied and that petitioner be authorized at any time hereafter to apply for an order to complete the taking of petitioner's deposition upon receiving the opinion of petitioner's physician that this may safely be done.

/s/ Ralph G. Albrecht

Sworn to before me this 16th day of December, 1955

/s/ Dirck VanR. Vreeland
Dirck VanR. Vreeland
Notary Public for the State of New York
Appointed for New York County
No. 31-9485950

Commission Expires March 30, 1956

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296 [Filed December 19, 1955]

AFFIDAVIT SUBMITTED ON BEHALF OF MRS. ELSA W. de WAGENKNECHT AND N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ, EXPECTED ADVERSE PARTIES, UPON MOTION TO DETERMINE THE AMOUNT OF THE EXPENSES AND FEES TO BE PAID TO THEIR COURT APPOINTED ATTORNEY BY PETITIONER

State of New York)
County of New York) SS

Ralph G. Albrecht, being duly sworn, deposes and says:

I am an attorney and counsellor at law, a member of the bar of the State of New York and a partner in the firm of Peaslee, Brigham, Albrecht & McMahon, 501 Fifth Avenue, New York 17, New York.

On June 13, 1955 by an order signed by Judge Curran I was appointed attorney for Mrs. Elsa W de Wagenknecht, a citizen and resident of Mexico, and N V Edmund Wagenknecht's Handel Maatschappij, a Netherlands corporation not doing business in the United States, named in the petition herein as expected adverse parties, to represent the same in connection with the perpetuation of the non-resident petitioner's deposition

In her petition to perpetuate her testimony under Federal Rule 27 of Civil Procedure, Mrs. Stinnes, who is a national and resident of Germany and, as such, a non-resident of the District, states that she is over 82
297 years old and in frail health (par. 12), and alleges the following further facts in support of her petition: Mrs. Wagenknecht, the said Dutch corporation, and others at various times had filed a number of claims with the Office of Alien Property, Department of Justice, for the return of property vested by the Attorney General under the authority of the Trading with the Enemy Act. On February 8, 1955, the petitioner, Mrs. Stinnes, had filed a similar notice of claim with the Office of Alien Property to substantially all of the property previously claimed by Mrs. Wagenknecht and the said Dutch company. In case the vested property should be returned by the Attorney General to any of the expected adverse parties, the petitioner "expects to bring one or more actions against the persons, firms or corporations to whom such return is made, to establish her right, title and interest thereto and to recover the same, and the subject matter of petitioner's expected actions will be the unlawful withholding from her of said properties " (Petition, par 9)

In the summer of 1953 and again in 1954, prior to the institution of this proceeding by Mrs. Stinnes to perpetuate her testimony, a representative of the Attorney General and I, as attorney for Mrs. Wagenknecht, had made two efforts to obtain the deposition of Mrs. Stinnes. At the same time we also sought to take the depositions of petitioner's sons, Otto Stinnes and Hugo Stinnes, Jr., of certain officers and former officers of the Stinnes family partnership, and of other Stinnes companies. These efforts were made in connection with Civil Action No. 1734-52 and Civil Action No. 4920-52, both pending in this court, in which Mrs. Wagen-

knecht and other plaintiffs named therein sought the return of property that had been vested by the Attorney General on the ground that the property belonged to members of the Stinnes family and hence was enemy property. Both of these attempts to obtain Mrs. Stinnes' deposition failed by reason
298 of the uncooperative attitude of petitioner, who had been advised on both occasions by the American Consulate General in Dusseldorf of the desire of the Attorney General and Mrs. Wagenknecht to take her deposition.

The details of the two prior efforts to take Mrs. Stinnes' deposition are as follows:

On or about May 19, 1953, I gave notice on behalf of Mrs. Wagenknecht of her intention to take the depositions abroad of one or more of the following witnesses, all residing at Mulheim (Ruhr) Germany:

Hugo Stinnes, Jr., petitioner's son who, as his mother's attorney-in-fact, had been in charge of his mother's affairs after his father's death in 1924 and until 1950;

Wilhelm Unger, Director of Finance Department of the Stinnes family partnership, Hugo Stinnes o. H. (whose partners are Mrs. Stinnes and her sons Hugo and Otto) and, until 1948, of Hugo Stinnes, GmbH and subsidiary companies; and

Dr. Ewald Soller, former Director of Legal Department of the Stinnes interests and attorney for members of Hugo Stinnes o. H., the family partnership

A copy of said notice is attached hereto and marked "Annex A".

On or about June 8, 1953, the Attorney General announced his intention of taking the depositions in Germany of the following witnesses:

Otto Stinnes, Hamburg, petitioner's son who, as his mother's attorney-in-fact, has been in charge of his mother's affairs since 1950; and

Dr. Friedrich W. Meyer, Managing Director, Hugo Stinnes GmbH, Mulheim

A copy of said notice is annexed hereto and marked "Annex B".

Thereupon a representative of the Attorney General and I went abroad, and on July 22 the former took the deposition of Otto Stinnes in Dusseldorf.

and elected not to take the deposition of Dr. Meyer. On July 23 and 24, I took the deposition of Mr. Unger. Mrs. Stinnes refused to depose. Mr.

299 Soller was not then available for questioning; and as Hugo Stinnes, Jr. agreed to be available as a witness upon the trial of the pending actions, his deposition was not taken.

The following year the Attorney General requested that a further effort be made to obtain the deposition of Mrs. Stinnes. I took the position that Mrs. Stinnes' deposition was no longer necessary to Mrs. Wagenknecht in connection with the pending litigation since the depositions already taken adequately covered the issues. I pointed out that Mrs. Stinnes was over eighty years of age and that after the death of her husband in 1924 all her affairs and the family business enterprises had been managed by her son Hugo, and later by her son Otto; that the deposition of Otto had been obtained, as well as that of Mr. Unger, the Finance Director of the Stinnes enterprises, in whom, Otto had testified, the members of the Stinnes family had complete confidence; and that as Hugo had agreed to appear as a witness upon the trial of the pending actions, the testimony of Mrs. Stinnes was not necessary to Mrs. Wagenknecht's case.

Nevertheless, I subsequently agreed to comply with the wishes of the Attorney General, and stipulations to that effect were entered into on August 11, 1954. Upon the Attorney General's suggestion that the American Consulate General in Dusseldorf would prefer to act pursuant to court orders rather than stipulations, identical orders in Civil Action No. 1734-52 and Civil Action No. 4920-52, were submitted to the court and signed by Judge Bastian on August 13, 1954. These orders "authorized", but did not direct, the taking of Mrs. Stinnes' deposition. A copy of the order in Civil Action No. 1734-52 is attached hereto and marked "Annex C".

300 The following month counsel went abroad and, although Mrs. Stinnes had received timely notice of her examination from the American Consulate General in Dusseldorf, we again failed to obtain her testimony upon her failure to appear for questioning. We were informed at that time by one of her employees that she would not testify and had left Germany for

Burgenstock near Lucerne, Switzerland However, on that occasion the deposition of Hugo Stinnes, Jr , was taken on September 7 and 8, 1954 in Dusseldorf

Thus, in the opinion of the plaintiff, Mrs Wagenknecht, in Civil Action No 1734-52 and the plaintiff in Civil Action No 4920-52, the Stinnes angle has been adequately and completely covered by the depositions of witnesses with full and complete knowledge of all pertinent facts, viz.: the petitioner's attorneys-in-fact, her two sons, Hugo and Otto, and Mr. Unger, the Director of Finance of the Stinnes enterprises Accordingly, there was no further need or requirement for plaintiffs to seek the deposition of Mrs Stinnes who could only testify to generalities.

Meanwhile, on February 8, 1955 Mrs. Stinnes for the first time filed a claim with the Office of Alien Property for substantially all of the vested property for which Mrs Wagenknecht and companies in which she possessed a beneficial interest had previously filed claims.

Shortly thereafter Mrs Stinnes' attorneys brought to the attention of the Attorney General and of Mrs Wagenknecht's attorneys her belated desire to give her deposition Petitioner's attorneys claimed to be unable to produce Mrs Stinnes, a resident of Mulheim, Germany, within the jurisdiction of this court and proposed instead to take her deposition abroad They solicited the consent of counsel to that end but refused to

301 agree to bear the expenses of the expected adverse parties in connection with the taking of the deposition abroad; in complete disregard of the fact that petitioner is a German national and non-resident of the District, and the fact that Mrs Wagenknecht had no interest whatever in perpetuating Mrs Stinnes' testimony, whose interest was now completely adverse Petitioner's attorneys refused to recede from their refusal to pay the expenses of the expected adverse parties, and on or about May 12, 1955 filed the petition herein under Rule 27

I gave notice to all parties that I would appear in opposition to the petition, unless petitioner agreed to bear all expenses incurred by my clients in connection with the perpetuation of her testimony. The Attorney General's representative took the position that while any expected adverse

party possessed the undoubted right to oppose the petition unless petitioner agreed to pay their expenses in connection with the taking of such deposition, he was nevertheless concerned that such opposition, although justified, would delay, and possibly prevent, the deposition the taking of which he favored.

On several occasions I had pointed out previously to the Department of Justice that if the Attorney General desired to obtain Mrs. Stinnes' testimony, he was possessed of the undoubted power to compel Mrs. Stinnes to submit herself to examination, upon penalty of dismissal of her claim. By his letter dated June 29, 1955 (moving affidavit, p. 5) the Attorney General finally proceeded on that theory and made a demand upon petitioner's attorneys to produce their client for examination in Dusseldorf on August 1.

302 Negotiations were then resumed upon the initiative of petitioner's attorneys, with counsel for all expected adverse parties, and on July 11 an agreement was reached that provided that the deposition of petitioner be taken in Dusseldorf, that it commence on August 15, and that petitioner bear all expenses of her deposition including my travel and other expenses and an attorney's fee for my services in connection with the taking of the deposition abroad. This agreement was incorporated in an order to which all parties consented and which was signed on July 11 by Judge Morris.

On July 16 I sailed for Europe for the purpose of consulting with the general manager of my client, whose offices are located in Basel, Switzerland, and preparing for the cross-examination of petitioner. On July 19 my office informed me by radiogram that petitioner's attorneys had advised that Mrs. Stinnes was "now hospitalized until August 20" and had requested our consent to postponement of her deposition until August 30. Such consent was given and subsequently confirmed by stipulation dated July 21 which provided

(1) that petitioner's deposition should commence on August 30 instead of August 15, or, the health of petitioner permitting, at an earlier date than August 30; and

(2) that the advances for expenses required to be made to me pur-

suant to the order of July 11, should be made just as though the deposition of petitioner had commenced on August 15

Subsequently I was informed that there appeared no likelihood that petitioner would be able to give her deposition before August 30 I arrived in Dusseldorf on August 28 and stopped at the Hotel Breidenbacher Hof, where petitioner's attorney and the attorney representing the Attorney General also resided

The taking of deposition commenced on August 30 In consideration of petitioner's age and the fact that she is a chronic sufferer from gastric and duodenal ulcers, and had just been discharged from one of her peri-

303 odic treatments at the University Hospital in Hamburg, when the petitioner deposed at the American Consulate General in Dusseldorf, it was agreed that her testimony would be taken from day to day, from approximately 3 P.M until 5:30 P.M., with a fifteen-minute recess at the end of the first hour of examination This recess gradually became longer and finally extended for about thirty minutes each day After petitioner left Dusseldorf to resume her treatments at the University Hospital in Hamburg under Dr H H Berg, an internationally recognized authority on gastro-enterology, in whose continuous care she has been for her ailment for the past 29 years, she continued her deposition in her hospital room there for from two to two and one-half hours each day, commencing about 10:30 A M and interrupted after an hour by a substantial recess.

It is obvious from the above that petitioner has suffered from ulcers for a very long period of time Her frail health therefore was not brought about by her deposition, although it was undoubtedly aggravated by the strain and excitement of testifying Moreover, it is a fact that it was the petitioner herself who sought to perpetuate her testimony Any adverse effect on her physical condition that may have resulted from her deposition was therefore brought about by her own initiative Hence she herself must within reasonable limits bear the responsibility for any increased disability that resulted to her from the taking of her testimony.

It is our earnest submission that a reading of the transcript of petitioner's testimony will show beyond doubt that throughout my cross-

examination of Mrs Stinnes she has been treated by me with all the respect and courtesy to which an elderly lady is entitled at the hands of examining counsel discharging his professional responsibility (Vide e g my statement to petitioner, Dusseldorf transcript, p 91)

304 In view of petitioner's limited knowledge of English, she requested to be examined in German. This procedure required, therefore, after a question was asked in English, that it be translated into German Thereupon the witness replied in German, and her answer was then translated for the record into English The cross-examination of an elderly woman in frail health, conducted through an interpreter, is at best an arduous and time-consuming procedure

Moreover, throughout her deposition, petitioner required the use of a hearing aid to overcome her deafness The combination of her impaired hearing and her frequent inability to hear the question for one reason or another, or to comprehend the same when her mind wandered in the course of the examination in Hamburg during which sedatives were administered to her, repeatedly slowed up her deposition and also made necessary the repetition of the questions asked, before an answer could be elicited from her, and this answer frequently unresponsive In other words, the effective time of counsel to ask questions was cut in half, and even more, so that it may be fairly submitted that my cross-examination of the witness each day was the equivalent of what would be perhaps only one hour's straight questioning of an average witness, or a total of 19 hours for the entire period of my cross-examination to October 16

On September 27 petitioner's attorneys announced that upon the orders of her physician, petitioner would be available for only one additional session and that the examination would be recessed the following day until October 5 to permit petitioner to depart for Hamburg for further examination by her physician, Dr Berg

305 On October 2, petitioner's attorney advised me that he had been informed that Dr Berg had recommended a six to twelve months' suspension of the deposition unless it could be completed in a few sessions in Hamburg On the following day, petitioner's attorney stated that Dr

Berg would allow petitioner to be questioned for only five or six more sessions Counsel met on October 11 with Dr Berg who subsequently confirmed that he would allow the further examination of petitioner to continue for only six sessions In the course of these six sessions I continued my cross-examination of petitioner, and when her deposition was stopped by Dr Berg, I had not completed my cross-examination The petitioner's deposition has therefore not been completed

The above recitals are indicative of the fact that the illness of the witness made it impossible for counsel to conduct petitioner's examination expeditiously day after day until completion Moreover, although the taking of petitioner's uncompleted deposition commenced August 30 and extended to October 16, the witness actually deposed in Dusseldorf intermittently for a total of only 19 days, viz on August 30, 31, September 2, 3 (Saturday) 5 (Labor Day), 6, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 26 and 27, and in Hamburg petitioner deposed for a total of 6 days, on October 11, 12 (Columbus Day), 13, 14, 15 (Saturday) and 16 (Sunday)

The actual testimony of the witness was complemented by frequent conferences between counsel, and extra sessions attended only by counsel in the absence of the witness, for the purpose of completing the record of the deposition Such additional sessions in the absence of the witness included those held in Dusseldorf on September 15, 16, 23, 26, 27, 28 and October 5, and also in Hamburg on October 13, 15 and 17

306 The order of July 11 signed by Judge Morris required petitioner

(1) to "bear all expenses incurred in connection with the taking of her deposition",

(2) to "pay to Ralph G Albrecht, attorney for Mrs. Elsa W de Wagenknecht and N V Edmund Wagenknecht's Handel Maatschappij, a reasonable attorney's fee for his services in connection with the taking of the deposition * * * * * Such fees shall be computed on the basis of the time necessarily spent by said attorney in traveling to and from the place of the taking of petitioner's deposition in connection therewith, and attending the taking of said deposition", and

(3) to pay "the travel and other expenses incurred by said attorney"

More particularly, the order required petitioner on or before August 2,

(1) to advance to said attorney, as a payment on account of his fees and expenses, the sum of $1,000,

(2) to post with the Clerk of this Court the sum of $4,000 to secure said attorney the payment of his fees and expenses, and

(3) to advance to said attorney on Monday of each week during the taking of the deposition the sum of $250 as a payment on account of his fees and expenses.

In compliance with these requirements petitioner posted the sum of $4,000 with the Clerk; and advanced the sum of $1,000 on account of my expenses. In addition, the following payments in their equivalent in German currency, were made to me abroad:

August 30	- Payments due August 15 and 22	$500
September 2	- Payment due August 29	250
September 8	- Payment due September 5	250
September 13	- Payment due September 12	250
September 19	- Payment due September 19	250
September 27	- Payment due September 26	250
October 5	- Payment due October 3	250
October 10	- Payment due October 10	250
October 17	- Payment due October 17	250

The total of these advances to me is $3,500

Attached hereto and marked "Annex D" is an itemized statement of my travel expenses and principal disbursements necessarily incurred in
307 connection with the taking of petitioner's deposition. No attempt has been made to include all out-of-pocket expenses on this account. It is respectfully requested that this statement be approved and that my travel and other expenses to be paid by petitioner be allowed in the sum of $3,459.87

Upon my appointment by the court as attorney for Mrs. Wagenknecht and the Dutch corporation, I filed the usual praecipe noting my appearance. Upon the insistence of petitioner's attorneys that they would be prejudiced

by unnecessary delays if they had to serve their papers on me without the District. I complied with their demand and authorized our Washington correspondent, Henry F. Butler, Esq., senior partner of Butler, Koehler & Tausig, also to note his appearance on behalf of these adverse parties. During my absence abroad my office filed a motion to require petitioner to post additional security to further guarantee the payment by petitioner of an attorney's fee directed to be paid to me by the order of July 11. In opposing this motion petitioner's attorneys also filed their cross-motion to terminate the deposition. The preparation of the moving papers and affidavits, the considerations of applicable legal points as well as the burden of the arguments on the return day of both motions necessarily became the task of my New York office and of Mr. Butler and his partner John Geyer Tausig, Esq. This has resulted in additional expense to my clients. Mr. Butler has submitted to me a statement for $1,639.70 covering his firm's part of these services, which is annexed hereto and marked "Annex E". It is respectfully requested that this additional disbursement of my clients be approved and allowed and that petitioner be directed to pay the same.

308 For the purpose of determining the amount of a reasonable attorney's fee to be paid by petitioner, the following considerations appear to be relevant.

(a) I was necessarily absent from my office from July 16 to October 20, 1955, a period totaling 97 days, solely for the purpose of participating in the taking of petitioner's deposition;

(b) My services were rendered wholly without the country, and during that time I was unable to continue the handling of any professional matters of my firm or my personal clients, which I would have been able to do if petitioner had perpetuated her testimony in Washington. Throughout her deposition my time was fully occupied by problems relating to the same, which included attendance at the hearings, attendance at counsel's meetings in the absence of the witness, preparation for the cross-examination of the witness, conferring with persons competent to supply information respecting the subject matter of the deposition, at various

places in Germany, and examination of voluminous documentation bearing on the issues

(c) The value of the property interests with respect to which petitioner or her successors in interest may subsequently institute suit against Mrs Wagenknecht and N V Edmund Wagenknecht's Handel Maatschappij, may be estimated at between 15 million and 20 million dollars. Without going into a detailed discussion of all property interests, it will be indicative of their substantial value to point out that the vested property includes

(1) 531,845 shares Hugo Stinnes Corporation which, at the prices
309 quoted on the New York Stock Exchange during 1955, possess a value of from 11 million to more than 16 million dollars (vide p. 5, moving affidavit, where a letter from the Attorney General is quoted that refers to the value of these shares as 15 million dollars)

(2) Various debts totaling $2,500,000

(3) Bank deposits of approximately $150,000, and

(4) Cash amounting to around $1,500,000

(d) At all times since my admission to the bar of New York in 1923, I have been associated with the firm of which I am now senior partner Throughout the course of my association with it, the members of my firm have represented important clients and have appeared in substantial litigations, in appeals before our highest state and federal courts, international arbitrations and trials Since the termination of the last war I personally have been extensively engaged abroad for American as well as foreign clients, particularly in England, Germany, Holland, Sweden and Switzerland As counsel for private interests I participated in several problems of international import, including the dismantling of plants of German heavy industry in the Ruhr by the Allied Military Government, the decartelization of the German steel and coal industries pursuant to the laws of the Allied High Commission for Germany, and the German External Debt Settlement in London I have also participated professionally in the establishment of substantial commercial connections between European and American industry As associate trial counsel to the late Mr Justice Robert H Jackson I took a leading part in the trial of German

War Criminals before the International Military Tribunal at Nurnberg. My participation in these matters has required me to make frequent and,
310 at times, extended trips out of the country for consultations, negotiations and appearances before foreign tribunals. Since 1950 I have made a total of 22 trips to Europe.

By education and experience I have acquired a complete competence in the German language. Upon the taking of petitioner's deposition this knowledge was an advantage that enabled me to deal with all language problems, particularly those of interpretation, throughout the same. On the other hand petitioner's attorney was assisted in Dusseldorf and Hamburg by Mr. von Papen, whose appearance is noted on the record, to aid him with the German language. Both Mr. von Papen and I were called upon on countless occasions, at times for extended periods, to assist in the proper translation of the witness' testimony and its accurate transcription for the record. The eminent readability of the transcript may fairly be said to be due in no small measure to the contributions made by Mr. von Papen and myself.

In recent years I have been a member of the Committee on International Law and of the Committee on Foreign Law of the Association of the Bar of the City of New York, and I am presently Chairman of the Committee on Claims against Governments of the American Bar Association. Besides membership in these professional organizations, I am active in the American Society of International Law, and a member of the International Law Association and a patron of the International Bar Association.

If petitioner's deposition originally had been set to commence on August 30, I would have departed for Europe on a date later than the July 16 sailing of the S. S. "Liberte". The travel season being at its height during the month of July, it proved extremely difficult to obtain any accommodations at all. The two-week postponement of the deposition re-
311 quested by petitioner a few days after my departure necessarily brought about an enforced lengthening of my stay abroad.

While my protracted stay abroad actually totaled 97 days, the annexed account of my travel and other expenses covers a period of only 76

days Similarly, I propose that a reasonable attorney's fee for me be computed on the basis of a period of 76 days I have computed such fee, as provided in Judge Morris' order of July 11, on the basis of the time necessarily spent in traveling to and from the place of the taking of petitioner's deposition in connection therewith, and attending the taking of said deposition At an hourly rate of $50, or $400 for an eight-hour day, I submit that a reasonable fee for my services for the period of 76 days is $30,400 I respectfully request that this amount be approved and allowed and that petitioner be directed to pay the same for my services on behalf of my clients in connection with the taking of petitioner's deposition.

It only remains for me to point out that if the order of this court of July 11 had not required petitioner to bear all expenses of her deposition, the bill that would have been rendered to my clients in due course would have included the said amount of $30,400 for services rendered, and the further items of $3,459 87 for my disbursements and $1,639 70 covering Mr Butler's statement.

I have read the moving affidavit and have the following observations to make with respect to some of the statements contained therein.

Apparently for the purpose of advancing the proposition that as attorney for prospective adverse parties I was entitled to little if any compen-

312 sation, the affiant overlooks the fact that (1) I had been appointed by the court as such attorney, and (2) the order of July 11 specifically directs petitioner to pay all expenses in connection with the taking of her deposition, including my expenses and fees Hence the statement (p 7) that my appointment was "not necessarily in the interest of the petitioner" would seem to have no bearing on the matter Moreover, a short answer to this astonishing allegation is, of course, that it was upon petitioner's own motion that her testimony be perpetuated Unless the prospective adverse parties were represented and had full opportunity to cross-examine, such deposition would be worthless as evidence Thus it was primarily in the interests of petitioner herself that the prospective adverse parties were represented by court appointed counsel upon the taking of her deposition

Petitioner is a non-resident alien who has come into this court to

take advantage of the provisions of the Federal Rules of Civil Procedure and to avail herself of the privileges accorded to suitors before this forum which is supported by American taxpayers. Ordinarily it would follow that a non-resident petitioner would present herself within the jurisdiction of this court for the taking of her deposition. This she was unable or unwilling to do and requested instead that her deposition be taken abroad 4,000 miles away from the seat of this court. It is our submission, and it has been so ordered by Judge Morris on July 11, that the petitioner must "bear all expenses incurred in connection with the taking of her deposition" including my expenses and fees.

313 There is no warrant for the expression of doubt in the moving affidavit (p. 8) "that Mr. Albrecht went to Europe primarily for this proceeding." After the Attorney General in his letter of June 29 had demanded of petitioner that she submit herself for examination in Dusseldorf on August 1, I made prompt efforts to obtain sailing reservations in the event that petitioner agreed to comply with the Attorney General' demand. Not until the entry of Judge Morris' order on July 11 was it certain that petitioner's deposition would be taken. The order fixed August 15 as the date for the taking of such deposition, and the Attorney General agreed to such postponement. At that time I had reservations on the S.S. "Liberte" sailing from New York on July 16. The court will take notice of the fact that July is the height of the travel season to Europe and that late reservations are extremely difficult to obtain or change. I therefore sailed on July 16 and planned to use the intervening time to August 15 to prepare myself for the cross-examination of petitioner. My sole purpose in going abroad was to attend the taking of petitioner's deposition and I declare that I have received no invitation or request of any kind from any client, including the prospective adverse parties herein, to proceed abroad for any other purpose.

The moving affidavit relates (pp. 8-9) that a number of law suits had been filed in the German court against petitioner on behalf of my clients, and it is estimated that I went abroad in part at least for the purpose of participating in the preparation of these law suits. I participated in no wise in the preparation or prosecution of any German law suits against petitioner.

I understand from my clients' legal adviser in Switzerland that he had been instructed to cause several actions to be commenced for the purpose of obtaining from the German court a judgment declaring Mrs. Stinnes not to be the owner of the property for which she had filed her claim with the Office of Alien Property that is adverse to the claims of my clients. I am also informed that similar actions against Mrs. Stinnes have been brought
314 or are about to be brought also on behalf of other suitors who charge that petitioner' claim is adverse to their interests. These include a Professor H A. Schlubach and, I believe, the petitioner's nephew, Mr. H H Stinnes and Professor Fischer.

It is respectfully requested that pursuant to the July 11 order of Judge Morris petitioner be directed to pay me as a reasonable attorney's fee the sum of $30,400, disbursements of $3,459.87 and the further sum of $1,639.70 in payment of the statement of Henry F. Butler, Esq.

/s/ Ralph G. Albrecht

Sworn to before me this 16th day of December 1955

/s/ Dirck VanR. Vreeland

Dirck VanR Vreeland
Notary Public for the State of New York
Appointed for New York County
No 31-9485950
Commission Expires March 30, 1956

315 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed December 19, 1955]

IN THE MATTER OF THE PETITION OF	)
MRS. HUGO STINNES, SR., also known as MRS. CLAERE HUGO STINNES, MRS. CLARE WAGENKNECHT STINNES, and CLARE HUGO STINNES-WAGENKNECHT,	) No. 2158-55
Petitioner,	)
TO PERPETUATE HER OWN TESTIMONY	)

Annexes Attached Hereto

Annex A - Notice dated May 19, 1953 of depositions to be taken on behalf of Mrs. Elsa W. de Wagenknecht

Annex B - Attorney General's notice dated June 8, 1953 of depositions to be taken abroad

Annex C - Order dated August 13, 1954 of Judge Bastian in Civil Action No 1734-52 authorizing taking of depositions abroad

Annex D - Statement of Mr. Albrecht's travel expenses and other disbursements incurred in connection with taking of petitioner's deposition in Dusseldorf and Hamburg, Germany

Annex E - Statement dated December 15, 1955 of Henry F. Butler, Esq. for services rendered and disbursements incurred, in the sum of $1,639.70

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16 [Filed December 19, 1955]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELSA W. de WAGENKNECHT, individually and as Executrix and sole heir of Don Edmundo Wagenknecht, deceased,	)
Plaintiff,	)
- against -	) Civil Action No. 1734-52

HERBERT BROWNELL, JR., Attorney General of the United States, as successor to the Alien Property Custodian, and IVY BAKER PRIEST, Treasurer of the United States,

Defendants.

NOTICE TO TAKE DEPOSITIONS

To: Hon. Dallas S. Townsend, Assistant Attorney General
James D. Hill, Esq.
Robert J. Wieferich, Esq.
James H. Falloon, Esq.
Walther W. Guenther, Esq.
Attorneys, Department of Justice,
Washington 25, D. C.

Attorneys for Defendants.

PLEASE TAKE NOTICE That the plaintiff in the above-entitled action, by her undersigned attorney, will take the depositions of the following witnesses upon oral examination pursuant to the Federal Rules of Civil Procedure, and more particularly Rules 26 and 30 thereof, at the dates and places indicated, before a United States Consular Officer or other officer authorized by law to administer oaths:

Dr. Paul Gmur-Henggeler

at 9:30 A. M. on July 7th, 1953 at the office of said witness at No. 1 Lowenstrasse in Zurich, Switzerland;

Wilhelm Unger
Dr. Ewald Soller
Hugo Stinnes, Jr., and
Mrs. Clare Wagenknecht Stinnes

at 9:30 A. M. on July 15th, 1953 at the American Consulate General in Dusseldorf, Federal Republic of Germany;

Torsten Svensson

at 9:30 A. M. on July 27th, 1953 at the American Consulate General in Stockholm, Sweden.

The taking of said depositions will take place at the places mentioned above and will commence and continue from day to day after the dates noticed above, or at such other time or times and at such other place or places as the parties may agree, until such depositions are completed.

Dated, New York, May 19, 1953

/s/ Ralph G. Albrecht
Ralph G. Albrecht
Peaslee, Brigham, Albrecht & McMahon
501 Fifth Avenue
New York 17, N. Y.
Attorney for Plaintiff.

Annex A

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317 [Filed December 19, 1955]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELSA W. de WAGENKNECHT, individually and as Executrix and sole heir of Don Edmundo Wagenknecht, deceased,

Plaintiff,

- against -

HERBERT BROWNELL, JR., Attorney General of the United States, as successor to the Alien Property Custodian, and IVY BAKER PRIEST, Treasurer of the United States,

Defendant

Civil Action No. 1734-52

NOTICE TO TAKE DEPOSITIONS

To: Peaslee, Brigham, Albrecht & McMahon, Esquires
501 Fifth Avenue
New York 17, New York

Henry F Butler, Esquire
1039 Investment Building
Washington, D C

Attorneys for Plaintiff

PLEASE TAKE NOTICE that:

(1) At 10:30 a m. on July 6, 1953, at the United States Consulate in the City of Amsterdam, The Netherlands, the defendants in the above-entitled action will take the deposition of G A E Van den Berg of Amsterdam, The Netherlands

(2) At 10:30 a m on July 8, 1953, at the United States Consulate in the City of Amsterdam, The Netherlands, the defendants in the above-entitled action will take the deposition of Bernard E. Roos, whose address is c/o Edmund Wagenknecht Handelmaatschappij of Amsterdam, The Netherlands.

(3) At 10:30 a m on July 15, 1953, at the United States Consulate in the City of Duesseldorf, Germany, the defendants in the above-entitled action will take the deposition of Dr. Friedrich W Meyer, whose address is c/o Hugo Stinnes, G m b H , at Muelheim-Ruhr, Germany.

(4) At 10:30 a m on July 22, 1953, at the United States Consulate in the City of Hamburg, Germany, the defendants in the above-entitled action will take the deposition of Otto Stinnes, who lives at Hamburg, Germany.

All of the foregoing depositions are to be taken upon oral examination pursuant to Rules 28 and 30 of the Federal Rules of Civil Procedure and before a United States Consul or Vice-Consul at such locations, all of whom being officers authorized by law to administer oaths and take depositions

The taking of all such depositions shall continue from day to day after the designated date for each deposition, or at such other times as the parties may agree, until each deposition is completed.

Dated: June 8, 1953

/s/ Robert J. Wieferich
Robert J Wieferich
Attorney, Department of Justice
Washington 25, D C
Attorney for Defendants

Annex B

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318 | Filed December 19, 1955 |

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELSA W de WAGENKNECHT, individually)
and as Executrix and sole heir of)
Don Edmundo Wagenknecht, deceased,)
Plaintiff,)

- against -

HERBERT BROWNELL, JR. Attorney General of the United States, as successor to the Alien Property Custodian, and IVY BAKER PRIEST, Treasurer of the United States,

Defendants

Civil Action No. 1734-52

ORDER AUTHORIZING TAKING OF DEPOSITIONS IN FOREIGN COUNTRIES

Pursuant to the terms of the Federal Rules of Civil Procedure, Rules 26, 28, 29 and 30, and upon the consent of all parties, it is by the Court this 13th day of August, 1954

ORDERED:

1 That the parties are authorized to take the depositions upon oral examination of the persons listed below, at such times and at such United States Consulates or other places in Europe as counsel for the parties may agree, without further notice, before any person designated in the Federal Rules of Civil Procedure, Rule 28:

Mrs Clare Wagenknecht Stinnes, Mulheim, Germany;
Hugo Stinnes, Jr., Mulheim, Germany;
Hans Carl von Linsingen, Zurich, Switzerland.

/s/ Walter Bastian
Judge

Entered August 13, 1954

We consent:

Peaslee, Brigham, Albrecht & McMahon

By /s/ Henry F Butler
Attorneys for Plaintiff

/s/ Robert J Wieferich
Attorney for Defendants

Annex C

31[illegible] | Filed December 19, 1955 |

STATEMENT OF TRAVEL EXPENSES AND OTHER DISBURSEMENTS INCURRED IN CONNECTION WITH THE TAKING OF DEPOSITION OF MRS. HUGO STINNES, SR IN DUSSELDORF AND HAMBURG, GERMANY

1.	New York to Le Havre - July 16 to July 22, 1955			
	Passage - S S "Liberte"			$ 615.00
	French Port Tax			13.00
	Radiogram, New York to "Liberte"			15.69
	Radiogram, "Liberte" to New York	fr.	3,824	
	Radiogram, "Liberte" to Basel		1,473	
	Gratuities on board S.S "Liberte"		10,000	
2.	Le Havre to Paris - July 22			
	Railroad fare, Le Havre to Paris	fr.	2,500	
	Taxi and porter		2,500	
	Hotel Plaza Athenee, Paris		8,000	
	15% service charge and hotel tax		2,300	
	Radiogram, Paris to New York		1,280	
	Miscellaneous expenses, including meals, gratuities, taxi and porter		7,000	
3	Paris to Dusseldorf			
	Railroad fare, Paris to Dusseldorf	fr	6,500	
	Pullman sleeper		6,000	
	Miscellaneous expenses, including breakfast, gratuities, porter and taxi		3,500	
	(Converted at fr 350 to $1)	(fr	54,877)	156.68
4	Disbursements During Period of Two-Week Postponement of Deposition - August 15 to August 28			
	14 days at $35 per day (including hotels and meals, service charges, taxes and miscellaneous expenses)			490.00
5.	Dusseldorf - August 28 through October 5			
	Hotel Breidenbacher Hof, 39 days at DM 60	DM	2,340	
	15% service charge, 39 days at DM 9		351	

	Meals, 39 days at DM 50 per diem (including service charge)	1,950.	
	Gratuities to hotel personnel	80.	
	Laundry	79.10	
	Taxis to hearing, 22 days at DM 3.	66.	
	Sept. 13, Cable to New York	11.80	
	Sept. 16, Cable from New York		5.06
	Sept. 19, Cable to New York	24.70	
	Sept. 20, " " " "	67.40	
	Sept. 28, " " " "	18.20	
	Sept. 29, " " " "	8.60	
320	Sept. 30, Cable to New York	31.10	
	Oct. 2, " " " "	33.20	
	Oct. 3, " " " "	53.40	
	Oct. 3, " " " "	17.20	
	Oct. 4, Cable to Washington	20.80	
	Oct. 4, Telephone, Washington to Dusseldorf		70.40
	Oct. 4, Telephone to Hamburg	7.90	
	Oct. 4, Cable to New York	13.80	
	Airmail postage - forwarding transcript of hearing to New York	54.30	
	Air passage, Dusseldorf to Hamburg, including taxis and tips	98.	
6.	Hamburg - October 6 through October 18		
	Hotel Vier Jahreszeiten, 13 days at DM 56	728.	
	15% service charge, 13 days at DM 8.40	109.20	
	Meals, 13 days at DM 50 per diem (including service charge)	650.	
	Laundry	60.05	
	Gratuities to hotel personnel	20.	
	Taxis to hearing (8 days at DM 8)	64.	

	Oct 17. Cable to London	2.40	
	Oct. 17. Cable to New York	13.20	
	Oct 18. Cable to New York	12.90	
	Oct. 19. Cable to New York	7	
	Oct 19. Cable to Watkins Glen, N Y.	13	
	(Converted at DM 4.2 to $1.)	(DM 7,006.25)	
7	Hamburg to New York - October 19 to October 20		
	Air passage via London to New York		415.90
	Miscellaneous expenses, including taxis, porters and gratuities		10.00
	Total Amount of Travel and Other Expenses		$3,459.87

Annex D

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321 [Filed December 19, 1955]

Law Offices of
Butler, Koehler & Tausig
Investment Building
Washington 5, D. C.

December 15, 1955

IN ACCOUNT WITH

Ralph G Albrecht, Esq
Messrs Peaslee, Brigham, Albrecht & McMahon
501 Fifth Avenue
New York 17, N Y

To professional services in the matter of the petition of Mrs. Hugo Stinnes, Sr , to perpetuate her own testimony, United States District Court for the District of Columbia, No 2158-55,

May 18, 1955, in full to date		$1,630.00
Disbursements		
Long Distance Telephones	51.77	
Local Transportation	9.35	
Excess Airmail Postage	2.58	

Certified Copy of Court Order	2.00	
Transcript of Portion of Proceedings before Judge Youngdahl	3.00	68.70
		$1,698.70

Annex E

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323 [Filed December 21, 1955]

SUPPLEMENTAL AFFIDAVIT OF RALPH G. ALBRECHT ON PETITIONER'S MOTION TO TERMINATE THE TAKING OF HER DEPOSITION

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

RALPH G ALBRECHT, being duly sworn, deposes and says:

On December 16, 1955 I dispatched a radiogram to Mr. H. C. von Linsingen, Basel, Switzerland, who is the general manager and attorney-in-fact for Mrs Elsa W de Wagenknecht named as a prospective adverse party herein In this message I requested that inquiry be made at Mulheim, Germany, where petitioner resides, to determine the present state of health of petitioner In reply to my telegraphic inquiry the following answer was received:

"REQUESTED INVESTIGATIONS HAD FOLLOWING RESULT STOP MRS. CLAERE HUGO STINNES DISCHARGED HAMBURG HOSPITAL NOVEMBER TWENTY FIFTH STAYED ATLANTIC HOTEL UNTIL DEPARTURE MUELHEIM DECEMBER SECOND STOP SINCE OCCUPIED WITH CHRISTMAS PREPARATIONS AND SHOPPING IN TOWN PARTICIPATING CONFERENCES ATTENDING TO CHRISTMAS CELEBRATIONS AND WILL HAVE FAMILY FESTIVAL OF ABOUT THIRTY PERSONS IN HER HOME TOMORROW."

Annexed hereto and made a part hereof is the original radiogram received from Mr von Linsingen

/s/ Ralph G Albrecht

Sworn to before me this 20th day of December 1955

/s/ Dirck VanR. Vreeland
Dirck VanR. Vreeland
Notary Public for the State of New York
Appointed for New York County
No. 31-9485950

Commission Expires March 30, 1956

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324 [Filed December 21, 1955]

RCA COMMUNICATIONS, INC.
A Service of Radio Corporation of America
25 West 43rd Street, N. Y., Tel. BR 9-0572

(RECEIVED DEC. 20, '55
PEASLEE, BRIGHAM)

FA277 DEC 20 1955

SDZ212 BASEL 56 19 2325

LT

GROTIAN NEW YORK

REQUESTED INVESTIGATIONS HAD FOLLOWING RESULT STOP MRS GLAERE HUGO STINNES DISCHARGED HAMBURG HOSPITAL NOVEMBER TWENTY FIFTH STAYED ATLANTIC HOTEL UNTIL DEPARTURE MUELHEIM DECEMBER SECOND STOP SINCE OCCUPIED WITH CHRISTMAS PREPARATIONS AND SHOPPING IN TOWN PARTICIPATING CONFERENCES ATTENDING TO CHRISTMAS CELEBRATIONS AND WILL HAVE FAMILY FESTIVAL OF ABOUT THIRTY PERSONS IN HER HOME TOMORROW

LINSINGEN

CFM SDZ212

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325 [Filed December 21, 1955]

AFFIDAVIT

CITY OF WASHINGTON)
SS:
DISTRICT OF COLUMBIA)

JAMES H. MANN, being duly sworn, deposes and says:

I am an attorney and counselor at law duly admitted to practice before this Court and I am a member of Pehle, Lesser, Mann, Riemer & Luxford, 1210 Eighteenth Street, N. W., Washington 6, D. C., attorneys for the petitioner herein. I have read the affidavit of Ralph G. Albrecht, Esq., sworn to December 16, 1955, in which he requests this Court to allow him fees of $30,400 and disbursenrents of $5,099.57, and I make this affidavit in opposition thereto.

By consenting to the Order herein of July 11, 1955, we committed the petitioner to the payment of Mr. Albrecht's reasonable fees and disbursements, and we have no intention of walking away from such commitment. On the other hand we believe that the fees and disbursements claimed by Mr. Albrecht are far beyond the realm of reasonableness.

At the very outset the Court's attention should be directed to the fact, admitted by Mr. Albrecht in the paragraph straddling pages 17 and 18 of his affidavit, that his trip to Europe and his attendance at the examination of Mrs. Stinnes were only in part in connection with this proceeding. Thus as Mr. Albrecht concedes, promptly upon the receipt of the Attorney General's letter of June 29, 1955, to the effect that he would take the testimony of Mrs. Stinnes on August 1, 1955, in Dusseldorf, Germany, by virtue of his own powers, Mr. Albrecht went about making sail-

326 ing reservations. This was before the entry of the Order of July 11, and indeed before any agreement with respect thereto had been reached, as such agreement was only arrived at during the morning of July 11, 1955. It is clear from the Attorney General's letter of June 29, and his subsequent letter of July 19, addressed to Mr. Albrecht and ourselves, that the examination of Mrs. Stinnes pursuant to the Attorney General's powers was to take place simultaneously with the taking of her deposition under any order herein, but was to be taken in any event and regardless of

whether any order was entered herein or if such order should by its terms have become null and void. The Attorney General's letter of June 29, 1955, is set out at pages 5-7 of my affidavit of November 25, 1955. The Attorney General's letter of July 19, 1955, is in pertinent part as follows:

> In accordance with the oral understanding reached between counsel on July 8, 1955, in the discussions which preceded the entry of the order to perpetuate the testimony of Mrs. Claere Hugo Stinnes, this will confirm that the date of August 1, 1955, which was set forth in our letter of June 29, 1955 for the taking of Mrs. Stinnes' testimony, is hereby set for August 15, 1955, to coincide with the date contained in the Order. We understand that this date is satisfactory to all parties concerned, although Mr. Albrecht has signified his desire to commence the deposition at an earlier date. In view of the provision of the consent order that it may become null and void in certain circumstances you will appreciate that our change of date is without prejudice to the right of the Attorney General to proceed on August 15, 1955, for the reasons expressed in our letter of June 29, 1955.

Both letters of the Attorney General bear the caption:

> Re: Wagenknecht v. Brownell, et al
> Wagenknecht, et al v. Brownell, et al
> Petition to Perpetuate the Testimony
> of Mrs. Claere Hugo Stinnes

Clearly, whoever was to pay Mr. Albrecht's fees and disbursements for attending the examination of Mrs. Stinnes pursuant to the Attorney General's powers should bear at least one-half of his fees and disbursements for his attendance at Dusseldorf where both proceedings took place simultaneously. In this connection, it should be pointed out that when Mr Albrecht sailed on July 16, the payment of $1000 00 to him on account, in
327 default of which the July 11 Order was to become null and void, had not yet been made: it was not made until August 1.

Mr. Albrecht computes his fees on the basis of 76 days. It is not quite clear whence the 76 days derive. The taking of Mrs Stinnes' deposition and conferences of counsel in connection therewith involved a total

of 38 days, including days, when for reasons of Mrs Stinnes' health, her examination was recessed . This figure, however, does not include Saturdays or Sundays when Mrs Stinnes was not examined or conferences of counsel were not held We submit that at least one-half of the burden of Mr Albrecht's travel time should be borne by whomever was to pay his fees and expenses for attending the Attorney General's examination of Mrs Stinnes and that, in any event, whatever hourly rate may be allowed Mr Albrecht for his professional services, a considerably lower rate would adequately compensate him for the six days or so he spent on the S S. Liberte and his day in Paris at the Plaza Athenee Certainly too, Mrs. Stinnes should not be required to compensate Mr Albrecht at all for any time in excess of a reasonable time spent by him on this matter, i e , for the excessive and unnecessary prolongation of his cross-examination

Mr. Albrecht would substantiate the reasonableness of the fee he claims by his assertion that but for the provision of the Order of July 11, he would bill his clients in an equivalent amount We think we need hardly point out to the Court that the fees which a lawyer might charge his own client afford no standard of reasonableness when the fees are to be paid, not by his client but by the adverse party. That this is necessarily so is amply demonstrated by this case Thus, Mrs Wagenknecht, knowing what Mr Albrecht's "usual rates" were, might have instructed him at any time to hasten the conclusion of his cross-examination of Mrs Stinnes because his bill was getting too high Mrs Stinnes was in no such position: On the contrary, Mr Albrecht takes the position that he has the

328 right to continue cross-examining Mrs Stinnes ad infinitum at $50 an hour to be paid by her In this connection, I wish to point out to the Court that I am informed that in a matter involving approximately six times the sums that are here involved, Chief Judge Laws in designating a Special Master to act here and abroad directed that his fees should be determined on the general standard of a rate of $25 an hour for a maximum of $125 while in the United States, and at $200 a day, including all expenses, except transportation, when abroad. The Special Master so

appointed is one of the most distinguished members of the Bar of this Court and I am informed that his appointment, unlike Mr. Albrecht's, was neither sought by him nor did it serve the interests of any of his clients.

With respect to disbursements, we note that Mr. Albrecht attaches no vouchers to his affidavit. It is earnestly suggested that if Mr. Albrecht is to be reimbursed for actual expenses incurred, he should be required to submit his hotel bills, transportation receipts and similar items. So far as the disbursement involving Mr. Butler's fees is concerned, Mr. Albrecht seems to have overlooked entirely Judge Curran's Order of June 13, the final paragraph of which provides that "subject to the provision of Rule 4(b) of the Rules of this Court Ralph G. Albrecht, Esq. of 501 Fifth Avenue, New York, New York, is hereby appointed as attorney to represent * * * ", etc. Rule 4(b) specifically provides:

> If an attorney appearing for a party does not have an office in the District of Columbia, there shall within ten days be joined of record in such appearance a member of the bar of this Court having an office in said District, in default of which the Court may strike all pleadings of such party.

We do not believe that Mrs. Stinnes should bear the expense of Mr. Albrecht's qualifying under the Rules of this Court and Judge Curran's Order, to practice law before this Court.

We note also that Mr. Albrecht would have Mrs. Stinnes pay for the trans-Atlantic cables and at least one telephone call. It is not clear what these were in connection with, but certainly she should not bear any part of the expenses of either Mr. Albrecht's unsuccessful motion for additional collateral or his defense against the motion to terminate. We therefore suggest that in addition to submitting vouchers with respect to his hotel and transportation expenses, Mr. Albrecht be required to produce the cables and some proof with respect to the telephone call or calls which he would include in his disbursements.

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We feel that whatever fees are to be paid Mr. Albrecht by our client should certainly not be computed at any rate higher than this Court set as compensation for the Special Master, as indicated above. Thus, we would

start with a basic rate of not more than $200 per day which would include all expenses except transportation As set out hereinabove, the actual number of days consumed by the taking of the deposition was 38 days and Mr Albrecht would be entitled to $7,600 of which the petitioner herein should only pay one-half because Mr Albrecht's presence abroad was, as already noted, required not only by this proceeding but by the proceeding initiated by the Attorney General's letter of June 29 The amount therefore attributable to Mrs Stinnes would be $3,800, to which should be added fees for one-half of his reasonable travel time and one-half of his actual costs of transportation from New York to Dusseldorf to Hamburg and return to New York

Mr Albrecht states that he traveled to Europe by boat and returned by airplane Thus, it would appear that an allowance of ten days for travel time would be generous Upon information and belief, it is customary for attorneys to be compensated at only one-half of the basic professional rate for travel time On that basis Mr Albrecht would be entitled to an amount of $1000 for his travel time of which only one-half should be attributable to Mrs Stinnes On the basis of accounts submitted by Mr Albrecht his transportation expenses amounted to $1,137 23, of which one-half is $568 62 We therefore suggest that the amount of $4,868 62 would be more than reasonable compensation for that part of Mr Albrecht's time and for the reimbursement for his necessary travel expenditures attribu-

330 table to the petitioner for the taking of her deposition pursuant to the Order herein of July 11, 1955 The petitioner is prepared to consent that Mr Albrecht be allowed that amount Since Mr Albrecht has already received $3,500, on this basis an additional $1,368 62 would be due him.

We have made inquiry into the practice followed in the United States District Court for the Southern District of New York in cases such as this. We are advised by eminent New York counsel that typical of the practice of that Court is the action taken in William A Atkins v. Sidney Grayson, Civil Docket 45-430, in which fees and expenses were allowed to counsel in the sum of $500, where the deposition was to be taken in London, and it was estimated that the taking of the deposition would consume three days.

s/ James H. Mann
James H. Mann

Subscribed and sworn to before me this 20th day of December, 1955.

s/ Lorraine D Basich
Notary Public

My Commission Expires June 14, 1958

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332 [Filed January 12, 1956]

AFFIDAVIT

CITY OF WASHINGTON)
ss.
DISTRICT OF COLUMBIA)

JOHN W. PEHLE, being duly sworn, deposes and says:

I am an attorney and counselor at law duly admitted to practice before this Court and I am a member of Pehle, Lesser, Mann, Riemer & Luxford, 1210 Eighteenth Street, N W , Washington 6, D C , attorneys for the petitioner herein

Upon the argument, on December 21, 1955, of petitioner's motion herein to terminate the taking of her deposition, Ralph G Albrecht, Esq , attorney for Mrs Elsa W de Wagenknecht and N V Edmund Wagenknecht's Handelmaatschappij, submitted to the Court without prior notice to, or service on petitioner or her attorneys an affidavit sworn to December 20, 1955 in which he quoted a radiogram which Mr Albrecht stated he had just received from one Karl von Linsingen, general manager and attorney-in-fact for Mrs Wagenknecht On December 22, 1955, I wrote a letter to Mr Otto Stinnes, son of, and attorney-in-fact for petitioner, residing as does petitioner at Mulheim-Ruhr, West Germany, in which I quoted the said radiogram Today I received a letter from Mr. Otto Stinnes from Mulheim-Ruhr, dated January 5, 1956 in which he says with respect to said radiogram:

"The telegram of von Linsingen is the limit I do not know whether you might be asked about the way how my mother spends her day Actually she remains in bed normally until after lunch

and spends then only a couple of hours up in order not to weaken too much her strength.

Christmas preparations and shopping was done by her daughters, whereas the old lady remains mainly at home. It is right that
333 a little festival in honour of the Silver Jubilee of my sister and her husband took place on December 20th, but who would and should deny her this little pleasure? It is a lie that she participated in conferences attending to Christmas celebrations. I should feel that any decent man receiving statements on such a base nature would act contrary to the expectations of Albrecht Linsingen and associates.

The fact that my mother stayed in hospital until November 25th although the taking of the deposition had stopped end of October proves in itself her health conditions at about that time. It can be no doubt that a renewal of the deposition taking would immediately react on her health and would probably endanger her life again. The statement of Prof. Dr. Berg and if necessary the x-ray pictures would prove to any doctor how dangerous the conditions were beginning and middle of October.

I wanted to give this additional information in case you would be requested by the Court about your opinion as to this telegram."

/s/ John W. Pehle
John W. Pehle

Subscribed and sworn to before me this 10th day of January, 1956.

/s/ Lorraine D. Basich
Notary Public

My Commission Expires June 14, 1958

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334 [Filed February 23, 1956]

MEMORANDUM AND ORDER

This cause came on to be heard on motion of petitioner, Mrs. Hugo Stinnes, Sr., to terminate the taking of her deposition, and on motion of prospective adverse parties, Mrs. Elsa W. de Wagenknecht and N. V.

Maatschappij, for an order determining the amount of travel and other expenses, and of attorney's fees to be paid by petitioner to their court appointed attorney.

The records and briefs in this case have been examined with care. At the outset it should be noted that this court has already allowed oral examination of petitioner, who is over eight-two years of age, to be resumed once on the understanding that it be discontinued when found by her physician to be unduly prejudicial to her health.[1] On October 12, 1955
335 her physician found that "the questioning is detrimental to the patient's health, and if continued for too long a time, the stress caused by it could result in an urgent complication of the ulcer (perforation or hemorrhage)." Believing that the examining parties have had fair and ample opportunity to go into the matters in controversy despite difficult circumstances, and being of the opinion that further cross-examination of petitioner would be oppressive, the deposition will be terminated by the Court. If, as a consequence, the deposition is rendered incomplete, such fact may be called to the attention of the Court when it is offered in evidence, so that it may be evaluated properly.

As to costs and attorney's fees, the disparity in the asserted claims of the parties is striking. Counsel for the prospective adverse parties seeks $30,400.00 for attorney's fees, $3,459.87 for disbursements, and $1,639.70 in payment of the statement of Henry F. Butler, Esq. Counsel for petitioner maintains that it is responsible for only one-half of the expenses incurred by opposing counsel, regardless of the amount; and that one-half should be carried by the government since it not only expressed

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1/ The order of this Court, dated October 6, 1955, reads in pertinent part: "ORDERED that: (2) The taking of the deposition of the petitioner upon oral examination be resumed at the Universitats-Krankenhaus Eppendorf, Hamburg, Federal Republic of Germany, as promptly after the entry of this Order as arrangements can be made therefore and petitioner's health permits, and shall continue there to be taken until counsel shall complete the same or until to continue to take the same would, in the written opinion of petitioner's physician be unduly prejudicial to the health of petitioner, whichever occurs first."

interest in having the testimony taken but has planned to and will make use of it Petitioner's counsel computes the amount owed, in toto, as $1,000.00 for travel time, $1,137.23 for transportation expenses, and $7,600 as compensation for legal services. Under this theory petitioner is willing to pay $1,368.62--$3,500 already having been paid.

The Court is of the opinion that the fees and expenses as stated and sought by counsel for the prospective adverse parties are high. Such fees should not be calculated on the basis of what a lawyer might charge his
336 own clients who retain greater control over counsel. However, it is not possible to evaluate fairly the claims made unless and until it is determined the respective interest and responsibility had in the testimony by the Attorney General and also other factors relating to fees and expenses. This can best be done more fairly and completely, subsequent to trial and by the taking of oral testimony where needed. In the interim we are satisfied that counsel is entitled to some compensation to carry on, so $3,000 will be awarded--such sum to be paid by petitioner

It is, therefore, by the Court this 23 day of February, 1956,

ORDERED that petitioner's motion to terminate the taking of her deposition be and the same hereby is granted

IT IS FURTHER ORDERED that $3,000 be presently awarded counsel for the prospective adverse parties, such sum to be paid by petitioner, but without prejudice as to the final amount or to receiving contribution from the government, as may be determined from the hearing subsequent to trial.

/s/ Luther W Youngdahl
Judge

337 Filed March 15, 1956

MEMORANDUM AND ORDER

The Attorney General of the United States has filed a motion to resettle and modify the order of this Court dated February 23, 1956, seeking relief from liability for any portion of the attorneys' fees, costs, or expenses incurred in the taking of petitioner's deposition. Petitioner has filed an affidavit detailing her position while neither directly supporting nor opposing the motion of the government. Counsel for the Prospective Adverse Parties has likewise filed an affidavit asking that the determination of fees and expenses not be delayed until after trial, and submitting that under Judge Morris' order of July 11, 1955 petitioner is liable for all expenses attending the taking of petitioner's deposition.

Upon reconsideration of this Court's order of February 23, 1956, and that of Judge Morris, dated July 11, 1955, as well as those facts relating to the latter order, the Court is satisfied that the Attorney General is in no way financially liable for expenses surrounding the taking of the deposition, but the record does not establish whether petitioner, alone, is, or petitioner and some other party jointly are liable. While the Court

338 would have preferred to resolve the question of reasonable expenses and attorneys' fees specifically and finally on the motion, additional information is needed to make a fair and proper determination. It seems that oral testimony is needed to present sufficient facts to the Court in order that the amount of, and responsibility for, such expenses and fees may be fixed. It is thus by the Court this 15 day of March, 1956,

ORDERED that the motion of the Attorney General of the United States for resettlement and modification of the order dated February 23, 1956 be and the same hereby is granted in all respects.

IT IS FURTHER ORDERED that all reasonable expenses and fees attending the taking of petitioner's deposition be assessed and liability fixed either subsequent to trial or subsequent to the taking of testimony in a hearing to be held upon the filing of an appropriate motion.

AND IT IS FURTHER ORDERED that in all other respects, and where not inconsistent with this order, the order of February 23, 1956

shall remain in full force and effect

/s/ Luther W. Youngdahl
Judge

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339 [Filed March 5, 1956]

MOTION OF THE ATTORNEY GENERAL OF THE UNITED STATES FOR RESETTLEMENT AND MODIFICATION OF ORDER DATED FEBRUARY 23, 1956

Comes now Herbert Brownell, Jr., Attorney General of the United States, as Successor to the Alien Property Custodian, a respondent in these proceedings, and moves the Court to resettle and modify the memorandum and order of February 23, 1956, in the following respects:

(a) By deleting the following language on page 2 of said memorandum and order: "... and that one-half should be carried by the government ..."

(b) By deleting the following language on page 3 of said memorandum and order. "However, it is not possible to evaluate fairly the claims made unless and until it is determined the respective interest and responsibility had in the testimony by the Attorney General and also other factors relating to fees and expenses ..."

(c) By deleting the following language from the last paragraph of the order on page 3 thereof: "... or to receiving contribution from the government ..."

This motion is made for the reason that the Attorney General of the United States is not liable for any part of the fees and expenses of Ralph G. Albrecht, counsel for N. V. Edmund Wagenknecht Handelmaatschappij, Amsterdam, The Netherlands, and counsel for Elsa W. de Wagenknecht, Cuernavaca, Mexico, respondents in this proceeding that at no time have counsel for Mrs. Stinnes, the petitioner herein, nor said Ralph G. Albrecht

340 maintained that the Attorney General of the United States was liable for any part of said expenses and fees; that all the parties have expressly agreed to the contrary; that said agreement was formalized in the consent

order entered in these proceedings on July 11, 1955, by Judge James Morris of this Court, under which order the deposition was subsequently taken; and further that it is beyond the jurisdiction of this Court to hold the Attorney General of the United States liable for the expenses and fees of counsel for two alien respondents in a proceeding to perpetuate testimony brought by an alien; where the Attorney General is himself a respondent.

All as set forth more fully in the attached affidavit of Robert J. Wieferich and memorandum of points and authorities filed in support hereof.

Dated March 5, 1956

/s/ Dallas S Townsend
Dallas S Townsend
Assistant Attorney General

/s/ James D Hill
James D. Hill

/s/ Robert J Wieferich
Robert J Wieferich

/s/ James H Falloon
James H Falloon

Attorneys, Department of Justice
Washington 25, D C

Attorneys for the Attorney General of the United States and Atlantic Assets Corporation

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342 | Filed March 5, 1956 |

AFFIDAVIT OF ROBERT J. WIEFERICH IN SUPPORT OF MOTION OF ATTORNEY GENERAL OF THE UNITED STATES FOR RESETTLEMENT AND MODIFICATION OF ORDER OF FEBRUARY 23, 1956

DISTRICT OF COLUMBIA SS

Robert J. Wieferich, having been first duly sworn, deposes and states as follows:

1 He is an attorney in the Office of Alien Property, United States Department of Justice, Washington, D C , regularly assigned to represent

the Attorney General of the United States and the Atlantic Assets Corporation in this proceeding; that he has appeared heretofore in this proceeding and is familiar with all of the proceedings which have taken place since the filing of the original petition to perpetuate the testimony of Mrs. Claere Hugo Stinnes;

2 The purpose of this affidavit is to support the motion of the Attorney General of the United States for resettlement and modification of the order of the Court of February 23, 1956, because that order indicates that the Attorney General of the United States may be liable for some portion of the fees and expenses claimed by Ralph G. Albrecht, counsel for two of the respondents in this proceeding; whereas affiant who participated in all of the negotiations and conferences which resulted in the consent order of July 11, 1955, pursuant to which petitioner's deposition was taken, believes that none of the parties to this proceeding have ever contemplated that the Attorney General would be so liable; that in fact all of the parties expressly agreed that the matter of fees and expenses was one solely between petitioner and Mr. Albrecht, and the court order of July 11, 1955 was entered to this effect;

343 3 The petitioner filed her petition to perpetuate her testimony in this Court on May 13, 1955. Subsequent to this there were a number of conferences between affiant, representing the Attorney General of the United States, Messrs. John Pehle, Lawrence Lesser and James Mann, representing petitioner, and Mr. Ralph Albrecht, representing Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht Handelmaatschappij. One of the principal matters of discussion was the payment of Mr. Albrecht's fees and expenses for going to Germany to attend Mrs. Stinnes' deposition. Affiant's own recollection is that no one suggested that the Attorney General of the United States should pay any portion of these fees and expenses; rather the issue was whether petitioner would do so, and, if so; in what amount. The affidavits of counsel for the petitioner previously filed in this proceeding, and also of Mr. Albrecht, quoted hereinafter, describe these negotiations accurately and, in affiant's opinion, clearly show that the parties never intended the Attorney General of the United States pay

any portion of Mr Albrecht's fees and expenses The final agreement of all of the parties was embodied in the consent order of July 11, 1955, and it was pursuant to the terms of that order that the deposition of petitioner was taken That order also clearly shows that petitioner was to pay Mr Albrecht's fees and expenses in whatever amount was eventually allowed by this Court;

4. The affidavit of John W. Pehle, counsel for the petitioner herein, dated September 26, 1955, was filed in these proceedings in opposition to a motion by Ralph G Albrecht for an order for increased security for his fees and expenses In that affidavit, Mr Pehle reviews the extensive negotiations which took place between the parties relative to the fees and expenses of Mr Albrecht, and his review of those negotiations clearly shows petitioner's understanding that petitioner was to be liable for whatever fees and expenses were eventually awarded to Mr Albrecht by the Court:

> Mr. Albrecht's Fees and Expenses - The Consent Order of July 11, 1955
>
> Mr Albrecht's fees and expenses for participating in the taking of the petitioner's deposition were the subject of consideration by him long prior to the institution of this proceeding, when, as attorney for Mrs Wagenknecht and the Dutch corporation, his consent to the perpetuation of petitioner's testimony was first sought. At that time, Mr Albrecht suggested his willingness to consent if petitioner would agree that the depositions of certain persons, theretofore taken in the aforementioned litigation between Mrs Wagenknecht and the Attorney General (to which petitioner has never been a party), would be admissible in possible future litigation between petitioner and Mrs Wagenknecht or the Dutch corporation. Mr.
> 344 Albrecht also indicated that he would insist on an agreement that petitioner pay him his counsel fees and reimburse him for his expenses. The details of the latter were not, however, fully explored at that time, for the reason that it was obviously impossible for us to agree to the admissibility of depositions of witnesses whom petitioner had.

never had an opportunity to cross-examine, and we so advised Mr. Albrecht. Thereafter, this proceeding was instituted on May 13, 1955, the hearing before Judge Curran, referred to above, was had on June 8, 1955, the Order of June 13, 1955, was entered, and service of the petition and the notice of hearing thereon, returnable July 11, 1955, was effected in accordance with such Order.

On June 30, 1955, at Mr. Albrecht's request certain of my partners and I and Mr. Wieferich of the Department of Justice met with Mr. Albrecht and Mr. Butler at Mr. Butler's office. Mr. Albrecht submitted for our consideration a proposed consent order herein, a copy of which is attached hereto as Exhibit A. It will be noted that in his proposed Order Mr. Albrecht provided for a payment in advance of $1,500 to him against his expenses and for the eventual payment to him of a reasonable attorney's fee to be computed on the basis of the number of days engaged in traveling to and from the place of the taking of the deposition and the attending of the taking of such deposition, the precise amount of the expenses and fees to be determined by the Court. It will also be noted that it contains no provision for the posting of security or weekly payments on account of expenses.

Mr. Albrecht's proposed Order (Exhibit A) was unacceptable primarily because of certain of its substantive provisions, and no agreement was reached at that meeting. On July 6, 1955, in the interests of moving forward promptly in the taking of petitioner's deposition, we wrote Mr. Albrecht a letter, a copy of which is attached hereto as Exhibit B. With such letter, we transmitted our draft of a proposed consent Order, a copy of which is attached as Exhibit C. As will be noted from our draft consent Order (Exhibit C) we in large measure accepted the provisions of Mr. Albrecht's proposed consent Order with respect to his fees and expenses. In fact, except for the deletion of the provision for a cash advance, the provisions we proposed in this regard were substantially the same as Mr. Albrecht's.

However that may be, the matter of his fees and expenses was the subject of further conversations with Mr. Albrecht on the telephone on Friday, July 8, 1955, and at a conference the following Monday morning, July 11 (the return date of the application on the petition herein) held at the office of Mr. Wieferich of the Department of Justice, who represents the Attorney General and Atlantic Assets Corporation, also named as expected adverse parties in the petition herein. During these conversations Mr. Albrecht raised again the question of a cash advance, and for the first time insisted on the posting of security and weekly payments on account of his expenses so long as the deposition continued. We had no difficulty in agreeing to $1,000 as a cash advance, but his other demands, not having been made until the eleventh hour, took us completely by surprise. However, in order to avoid the possibility of any further delays in the taking of petitioner's deposition, considering not only the precarious condition of her health, but also the position which Assistant Attorney General Townsend had taken in his letter of June 29, 1955, quoted above, we acquiesced in Mr. Albrecht's demands in their entirety, and the amounts to be paid to him weekly and the amount of security to be posted, which were set out in the proposed Order submitted on consent to Judge Morris and which was entered herein on July 11, 1955, were those demanded by Mr. Albrecht, and did not reflect any compromise whatsoever.

5. The affidavit of James H. Mann, counsel for the petitioner herein, dated December 20, 1955, was filed in these proceedings in opposition to Mr. Albrecht's motion to determine his fees and expenses. That affidavit states as follows:

345 "By consenting to the Order herein of July 11, 1955, we committed the petitioner to the payment of Mr. Albrecht's reasonable fees and disbursements, and we have no intention of walking away from such commitment."

Thus, it is clear that petitioner expected to pay Mr. Albrecht's fees and disbursements - but, of course, objected to the amount thereof. It is

true that the same affidavit goes on to refer to the Attorney General's letter of June 29, 1955, to all parties requiring Mrs. Stinnes to appear and depose in connection with her administrative claims in the Office of Alien Property; but the affidavit goes on to explain (p. 3) that Mr. Albrecht's contention is that if it were not for the Court order of July 11, 1955, in this case (the order under which the deposition was taken) "he (Mr. Albrecht) would bill his clients in an equivalent amount" (underscoring supplied). In other words, petitioner recognized that the basic controversy over fees and expenses here never involved the Attorney General; it was a controversy whether the petitioner, Mrs. Stinnes, or Mr. Albrecht's clients, Mrs. Wagenknecht and N. V. Edmund Wagenknecht Handelmaatschappij of Amsterdam should bear the cost.

This court has itself recognized that the basic controversy over Mr. Albrecht's fees and expenses was over whether Mrs. Stinnes or Mr. Albrecht's clients should bear that cost. At the hearing of the motion for additional security brought on by Mr. Albrecht on October 4, 1955, the following colloquies took place:

(Tr. p. 23) THE COURT: Aren't some of his (Mr. Albrecht) attorney's fees to come from his own clients?

Mr. McMahon: Your Honor, I don't know.

THE COURT: Well, shouldn't they?

Mr. McMahon: I would assume that insofar as . . .

THE COURT: He is acting in adverse interest, of course, to this lady.

* * *

(Tr. p. 28) THE COURT: Of course, here is one point you have to bear in mind, I think, Counsel. That is, that his cross examination, from his viewpoint, properly so -- it may be entirely proper -- may be prolonged for the very reason that he is bringing out matters not to the interests of Mrs. Stinnes.

Mr. McMahon: I should hope so, your Honor. That is what he is there for.

THE COURT: But for the interests of his own client. And for

that extra, prolonged cross examination, it would seem to the court that his own client ought to be paying for that

346 Mr McMahon Your Honor, if that is so, the court can fix it when the time comes

6. Mr Ralph G Albrecht, counsel for two respondents in this proceeding, Mrs Elsa W de Wagenknecht and N V Edmund Wagenknecht Handelmaatschappij, in his affidavit of December 16, 1955, which supported his motion to determine his fees and expenses, stated:

(p 6) I gave notice to all parties that I would appear in opposition to the petition (to perpetuate), unless petitioner agreed to bear all expenses incurred by my clients in connection with the perpetuation of her testimony

* * *

Negotiations were then resumed upon the initiative of petitioner's attorneys, with counsel for all expected adverse parties, (p. 7) and on July 11 an agreement was reached that provided that the deposition of petitioner be taken in Dusseldorf, that it commence on August 15, and that petitioner bear all expenses of her deposition including my travel and other expenses and an attorney's fee for my services in connection with the taking of the deposition abroad. This agreement was incorporated in an order to which all parties consented and which was signed on July 11 by Judge Morris.

Mr. Albrecht's affidavit continues:

(p 16) It only remains for me to point out that if the order of this court of July 11 had not required petitioner to bear all expenses of her deposition, the bill that would have been rendered to my clients in due course would have included the said amount of $30,400 for services rendered, and the further item of $3,459 87 for my disbursements and $1,639.70 covering Mr Butler's statement (underscoring supplied)

At the hearing on the Motion of Ralph G Albrecht for Additional Security on October 4, 1955, Mr Henry F Butler speaking on behalf of Mr Albrecht stated (Tr p. 4):

As it involved traveling abroad, and as it appeared in advance that the proceeding would be fairly long drawn out; on account of the age of the age of the plaintiff, he (Ralph Albrecht) asked for -- No. the court also provided that Mrs. Stinnes should pay his reasonable attorney's fees and expenses, ultimately to be determined by this court.

Further evidence of the intention of the parties that the fees and expenses of Mr. Albrecht were to be paid by petitioner when eventually settled by the Court, is:

1. The deposit of $4,000 00 with the Clerk of the Court was made solely by petitioner as security for Mr. Albrecht's fees and expenses.

2. The sum of $1,000 was advanced solely by petitioner to Mr. Albrecht on account of expenses

347 3. The following payments were made solely by petitioner to Mr. Albrecht while he was engaged in attending the deposition in Germany:

August 30	$500.00
September 2	250.00
September 8	250.00
September 13	250 00
September 19	250.00
September 27	250 00
October 5	250.00
October 10	250.00
October 17	250 00

The motion of Ralph G Albrecht for an order for additional security, heard by this Court on October 4, 1955, sought additional security only from petitioner, Mrs. Stinnes.

At no time was any payment requested of the Attorney General of the United States by any party, nor has any such demand been made to date.

8. The order of July 11, 1955, entered by Judge Morris with the consent of all parties, expressly provided in all respects for the payment of Mr. Albrecht's fees and expenses solely by the petitioner, Mrs. Stinnes. It should be noted that this order was entered after the June 29, 1955 letter

of the Attorney General to the parties demanding that Mrs Stinnes testify, and embodied the final terms of the negotiations described by Mr Pehle and Mr. Albrecht in the extracts from their affidavits quoted above The order, in pertinent part, is as follows:

> FURTHER ORDERED that the petitioner furnish a copy of the transcript of her testimony upon such deposition gratis to the attorneys for the named adverse parties, bear all expenses incurred in connection with the taking of her deposition hereunder, including the employment of stenographers, typists and interpreters necessary to the taking of her deposition, and shall pay such fees, if any, as may be due to the American Consular officer or other person before whom her deposition is taken; and it is
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> * * *
>
> FURTHER ORDERED that the petitioner shall pay to Ralph G. Albrecht, Attorney for Mrs Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, a reasonable attorney's fee for his services in connection with the taking of petitioner's deposition pursuant to this Order, and all reasonable expenses incurred by him in travel between New York and Dusseldorf (and return) and for board and lodging in Dusseldorf incurred in connection with the taking of such deposition, and that upon completion of the taking of petitioner's deposition the Court will, upon application and notice, (a) determine the amount of the travel and other expenses incurred by said attorney for Elsa W de Wagenknecht and N V. Edmund Wagenknecht's Handelmaatschappij, to be paid by petitioner, and (b) determine the amount of said attorney's fee to be paid by the petitioner to said attorney for Mrs Elsa W de Wagenknecht and N V. Edmund Wagenknecht's Handelmaatschappij Said fees shall be computed on the basis of the time necessarily spent by said attorney in traveling to and from the place of the taking of petitioner's deposition in connection therewith, and attending the taking of said deposition; and it is
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> * * *

3-48 9. The Attorney General of the United States has vested all of the petitioner's assets in this country, constituting approximately $15 million in value. In order to avoid the necessity of the petitioner also having to pay the expenses of counsel for the Attorney General of the United States, a separate paragraph of the order provided as follows:

> FURTHER ORDERED that the travel and per diem expenses of the Attorney General of the United States incurred in connection with the taking of petitioner's deposition pursuant to this Order be deemed conservatory expenses within the meaning of Section 32 (g) of the Trading with the Enemy Act, as amended, and together with such other amounts as are authorized by law, may be charged by the Attorney General of the United States as such against any property or interest or proceeds thereof which he may return to petitioner; and it is

10. Finally, it is affiant's belief that this Court would have no jurisdiction to order the Attorney General of the United States to pay the fees and expenses of counsel for respondents in a proceeding to perpetuate testimony brought by an alien. The authorities cited in the Memorandum of Points and Authorities attached hereto establish that in the absence of a specific statute there is no authority to assess costs and fees of private counsel against the Attorney General of the United States. Certainly, Rule 27 of the Federal Rules of Civil Procedure, under which this petition falls, makes no such provision - the Attorney General himself is a respondent here; except for the fact that under the terms of the consent order of July 11, 1955 in these proceedings the Attorney General agreed to obtain his own costs and expenses from petitioner's vested property, he also would be entitled to demand them of petitioner. In affiant's opinion, it would be an absurd result if a German resident such as Mrs. Stinnes, the petitioner here, could petition this Court to perpetuate her own testimony in Germany, and the Court compelled the respondent, Attorney General of the United States, to bear the legal fees and expenses of counsel for two other respondents - one a Mexican national, petitioner's sister-in-law, Mrs. Elsa de Wagenknecht, and the other a Dutch corporation, N. V.

Edmund Wagenknecht Handelmaatschappij Nor does the fact that the Attorney General has the power administratively to compel Mrs. Stinnes to testify because she has filed an administrative claim with the Office of Alien Property give this Court additional jurisdiction

In view of the foregoing, affiant respectfully urges the Court to resettle and modify its memorandum and order of February 23, 1956, and to delete those portions of the same which indicate that the Attorney General of the United States may be liable for a portion of the legal fees and expenses of Mr. Ralph G. Albrecht.

349 /s/ Robert J. Wieferich
Robert J. Wieferich

Subscribed and sworn to before me this 5th day of March, 1956.

/s/ Annetta Woldar
Notary Public.
Annetta Woldar
Notary Public, D. C.
Comm. Expires 11/30/60

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350 [Filed March 8, 1956]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE PETITION OF)
MRS. HUGO STINNES, SR., also)
known as MRS. CLAERE HUGO STINNES,) No. 2158-55
MRS. CLARE WAGENKNECHT STINNES, and)
CLARE HUGO STINNES-WAGENKNECHT,)
Petitioner,)
TO PERPETUATE HER OWN TESTIMONY)

AFFIDAVIT

DISTRICT OF COLUMBIA ss.

JAMES H. MANN being duly sworn deposes and says:

I am a member of Pehle, Lesser, Mann, Riemer & Luxford, attorneys for the petitioner herein, and I am fully familiar with all of the proceedings had heretofore herein. I make this affidavit in response to the

motion herein of Herbert Brownell, Attorney General of the United States, dated March 5, 1956, for a resettlement and modification of the Memorandum and Order of the Court herein dated February 23, 1956. The petitioner neither opposes nor supports said motion, and this affidavit is made and filed solely for purposes of clarification.

In the third paragraph of the Court's said Memorandum and Order the following appears:

> Counsel for petitioner maintains that it is responsible for only one-half of the expenses incurred by opposing counsel, regardless of the amount, and that one-half should be carried by the government since it not only expressed interest in having the testimony taken but has planned to and will make use of it.

351 It is most respectfully submitted that this statement of the petitioner's position is based upon an unfortunate misunderstanding of the consequences of petitioner's point that under the special circumstances of the case, petitioner should be called upon to pay only one-half of Mr. Albrecht's fees and expenses. As to the balance, it was, as I said at page 2 of my affidavit of December 20, 1955, our position that:

> Clearly, whoever was to pay Mr. Albrecht's fees and disbursements for attending the examination of Mrs. Stinnes pursuant to the Attorney General's powers should bear at least one-half of his fees and disbursements for his attendance at Dusseldorf where both proceedings took place simultaneously.

Again at page 3 of the same affidavit, I said:

> We submit that at least one-half of the burden of Mr. Albrecht's travel time should be borne by whomever was to pay his fees and expenses for attending the Attorney General's examination * * *.

And, again, at page 5 of my said affidavit I said:

> * * * of which the petitioner herein should only pay one-half because Mr. Albrecht's presence abroad was, as already noted, required not only by this proceeding but by the proceeding initialed by the Attorney General's letter of June 29.

In this connection, it may be appropriate to direct the Court's atten-

tion to the circumstances that the Attorney General's proceeding to examine the petitioner under his own authority were instituted by a letter dated June 29, 1955, (the text of which is set out at pages 5-7 of my affidavit of November 25, 1955), that the petitioner's deposition in this proceeding was taken pursuant to the Order herein of July 11, 1955, which was agreed to by counsel and submitted to the Court only that day, that by its terms said Order of July 11, 1955, was to become null and void if petitioner did not on or before August 2, 1955, pay Mr Albrecht $1000.00 on account of his fees and expenses, and that Mr Albrecht sailed for Europe on July 16, 1955, before said $1000 had been paid

352 Furthermore, it may be appropriate to call to the Court's attention Mr Albrecht's explanation of his early departure, as set out at page 18 of his affidavit of December 16, 1955

> After the Attorney General in his letter of June 29 had demanded of petitioner that she submit herself for examination * * * I made prompt efforts to obtain sailing reservations in the event the petitioner agreed to comply with the Attorney General's demand.

Our point was that under the circumstances, the petitioner should be called upon to pay only one-half of Mr Albrecht's fees and expenses, and that for the other half, Mr Albrecht might properly look to such person or persons as he would have expected to pay all his fees and expenses if the Order of July 11, 1955, had not been entered, or if, after it was entered, it had become null and void according to its terms, and petitioner had been examined only pursuant to the Attorney General's letter of July 29, 1955, and her deposition had not been taken simultaneously therewith pursuant to an Order in this proceeding.

We did not indicate who we believed might foot the half of Mr. Albrecht's fees and expenses not to be paid by the petitioner, but we assumed that it would of necessity be Mr Albrecht's client or clients, in whose interests alone, he was prepared to attend, and did attend, the examination of petitioner conducted pursuant to the Attorney General's letter of June 29. It was only fortuitous that such examination of the petitioner and the taking of petitioner's deposition in this proceeding were conducted simultaneously

We had no thought that any such obligation would fall on the Attorney General.

/s/ James H Mann
James H. Mann

Sworn to before me this 7th day of March, 1956.

/s/ Lorraine D Basich
Notary Public

[Seal] My Commission Expires June 14, 1958.

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361 [Filed April 13, 1956]

MOTION OF ELSA W. de WAGENKNECHT AND N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ FOR A HEARING TO BE HELD PURSUANT TO ORDER DATED MARCH 15, 1956 RESETTLING AND MODIFYING THE ORDER DATED FEBRUARY 23, 1956.

Comes now Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, named as expected adverse parties herein, and moves the court for a hearing pursuant to the order herein dated March 15, 1956.

This motion is made so that the court may now fix and determine a reasonable attorney's fee payable to the undersigned attorney by appointment of the court, and his travel and other expenses incurred in connection with the perpetuation of petitioner's testimony abroad, and which are to be paid by petitioner pursuant to the order of Judge Morris dated July 11, 1955.

In connection with the application made by petitioner on or about November 25, 1955, for the determination of said undersigned attorney's fee and expenses, an order was entered by Judge Youngdahl on February 23, 1956 which postponed the determination of the amount of such fees and expenses until "subsequent to trial" Thereafter, on March 15, 1956 the said order was resettled and modified, and as resettled and modified it provided:

362 "that all reasonable expenses and fees attending the taking of petitioner's deposition be assessed and liability fixed either subsequent to trial or subsequent to the taking of testimony in a hearing to be held upon the filing of an appropriate motion."

Annexed hereto is the affidavit of Ralph G Albrecht in support of this motion.

Dated: New York, April 11, 1956

s/ Ralph G Albrecht
Ralph G Albrecht
Attorney by appointment of the Court
501 Fifth Avenue
New York 17, New York

Henry F Butler
1039 Investment Building
Washington 5, D C

Attorneys for Elsa W de Wagenknecht and N V Edmund Wagenknecht's Handel-Maatschappij, Expected Adverse Parties

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363 [Filed April 13, 1956]

AFFIDAVIT OF RALPH G. ALBRECHT IN SUPPORT OF MOTION

STATE OF NEW YORK)
SS :
COUNTY OF NEW YORK)

RALPH G ALBRECHT, being duly sworn, deposes and says:

1 On May 13, 1955 the petitioner, Mrs. Hugo Stinnes, Sr., a non-resident of the District and domiciled in Mulheim (Ruhr), Germany, filed her petition herein for an order pursuant to Rule 27 of the Federal Rules of Civil Procedure, authorizing the taking of her deposition upon oral examination for the purpose of perpetuating her testimony.

2. By an order of Judge Curran dated June 13, 1955 I was duly appointed by the court as directed by Rule 27, as attorney for Mrs. Elsa W de Wagenknecht and N V Edmund Wagenknecht's Handel Maatschappij, named as expected adverse parties in the petition Thereafter, Henry F. Butler, Esq., a resident member of the bar of this court, also entered his appearance as attorney for said expected adverse parties; and Robert J. Wieferich, Esq and other attorneys of the Department of Justice en-

tered their appearances as attorneys for the Attorney General of the United
364 States and Atlantic Assets Corporation, also named as expected adverse parties in the petition.

3. On July 11, 1955 there was entered upon consent of all parties, the order of Judge Morris which authorized the perpetuation of petitioner's testimony pursuant to Rule 27, and directed that her deposition be taken at the American Consulate General, Duesseldorf, Federal Republic of Germany.

The said order also directed that petitioner "bear all expenses incurred in connection with the taking of her deposition", and the order then went on to particularize by making the following provisions for the payment of attorneys' fees, travel and other expenses, to the expected adverse parties and their attorneys.

(1) It directed that petitioner pay to me as the court appointed attorney for said expected adverse parties a reasonable attorney's fee and all travel and other expenses incurred in connection with the taking of petitioner's deposition abroad; and it further directed petitioner to advance the sum of $1,000 to me against such fee and expenses, to advance to me the sum of $250 each week throughout the taking of petitioner's deposition, and to post the sum of $4,000 with the clerk of the court as security for the payment of my fee and expenses; and

(2) With respect to the travel and per diem expenses of the Attorney General, the order directed that such expenses "be deemed conservatory expenses within the meaning of Section 32(g) of the Trading With the Enemy Act, as amended, and together with such amounts as are authorized by law, may be charged by the Attorney General of the United States as such against any property or interest or proceeds thereof which he may return to petitioner."

365 4. Pursuant to the said order of Judge Morris petitioner caused payment of $1,000 to be made to me on August 1, and further advances of $250 per week were made to me during the taking of petitioner's deposition, amounting to a total of $2,500. Petitioner's attorneys informed my office on August 1 that petitioner had caused a deposit of $4,000 to be made with

the clerk of this court.

5. The taking of petitioner's deposition commenced on August 30, 1955 in Duesseldorf. Petitioner's age and frail health necessitated short hearings that were held intermittently with the accompaniment of continuances of both short and extended duration. After a recess that extended from September 27 to October 11, the taking of the deposition was resumed in Hamburg until it was stopped by petitioner's physician on October 16, 1955. All pertinent facts with respect to the taking of said deposition are set forth in detail in the papers and affidavits heretofore submitted to the court and which are described in paragraphs 7 and 10 hereof.

6. Upon the return to this country of petitioner's attorney and the attorneys for the expected adverse parties, following the directive contained in Judge Morris' order of July 11, 1955, petitioner brought on her application for the determination of the amount of my attorney's fee and travel and other expenses directed to be paid by her by said order of Judge Morris.

7. Upon the hearing on petitioner's application before Judge Youngdahl on December 21, 1955 the following papers were before the court:

366 (1) Petitioner's undated application supported by the affidavit of James H. Mann, verified November 25, 1955.

(2) Affidavit of Robert J. Wieferich, verified December 12.

(3) Memorandum of points and authorities dated December 2, submitted by Ralph G. Albrecht.

(4) Affidavit of Ralph G. Albrecht, verified December 16.

(5) Affidavit of James H. Mann, verified December 20.

(6) Transcript of deposition of Mrs. Hugo Stinnes, Sr.

8. On February 23, 1956 Judge Youngdahl entered his memorandum and order on petitioner's application. Instead of disposing of the application before him, viz., to determine the amount of my fee and expenses which were to be paid by petitioner, the court postponed the determination of that question, and directed in its order

> "that $3,000 be presently awarded counsel for the prospective adverse parties, such sum to be paid by petitioner, but without prejudice as to the final amount or to receive a contribution from the

government, as may be determined from the hearing subsequent to trial."

9 At no time since the entry of said order of February 23 has petitioner complied with the direction contained therein to pay to the undersigned the further sum of $3,000.

10. The Attorney General thereupon on March 5, 1956 moved to resettle and modify the said order of February 23. The following papers were submitted to the court on that motion:

(1) Motion dated March 5, 1956 supported by affidavit of Robert J. Wieferich, verified March 5, and also his points of law and authorities

367 (2) Affidavit of petitioner's attorney, James H. Mann, verified March 7

(3) Affidavit of Ralph G. Albrecht, verified March 9.

(4) Affidavit of James H. Mann, verified March 12 in reply to affidavit of Ralph G. Albrecht

11. On March 15, 1956 the Attorney General's motion was granted in all respects and the order of like date now makes the following provision for the determination of petitioner's application to fix the amount of my fee and expenses payable by petitioner:

"IT IS FURTHER ORDERED that all reasonable expenses and fees attending the taking of petitioner's deposition be assessed and liability fixed either subsequent to trial or subsequent to the taking of testimony in a hearing to be held upon the filing of an appropriate motion.

AND IT IS FURTHER ORDERED that in all other respects, and where not inconsistent with this order, the order of February 23, 1956 shall remain in full force and effect."

Since this order was entered in a proceeding under Rule 27 and since, therefore, no suit may ever be instituted by petitioner against the adverse parties, and no trial may ever take place, it is not clear to the undersigned why the court did not proceed, without further delay, to dispose of petitioner's application by determining the amount of my fee and expenses.

12. However that may be, in view of the foregoing the undersigned respectfully requests that the amount of his fee and expenses, to be paid by petitioner, be determined, and that such determination award the undersigned, as requested in his affidavit verified December 16, 1955, a reasonable attorney's fee of $30,400, travel and other expenses of $3,459.87, and the further sum of $1,698.70 in payment of the statement submitted by Henry F. Butler, Esq. who is resident Washington counsel associated
368 with me as attorney for said expected adverse parties.

/s/ Ralph G. Albrecht

Sworn to before me this 11th day of April, 1956.

/s/ Martina C. Doherty

MARTINA C. DOHERTY
Notary Public for the State of New York
Qualified in New York County
No. 31-0979475
Certificate filed with City Register, N. Y. Co.
Commission Expires March 30, 1957.

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369 [Filed April 23, 1956]

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, named as expected adverse parties herein, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from so much of the order of February 23, 1956, resettled and modified by the order dated March 15, 1956, as granted petitioner's motion to terminate the taking of her deposition.

Dated: April 23, 1956

Ralph G. Albrecht
Attorney by appointment of the Court
501 Fifth Avenue
New York 17, New York

/s/ Henry F. Butler
Henry F. Butler
1039 Investment Building
Washington 5, D. C.

Attorneys for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, Expected Adverse Parties

Robert J. Wieferich, Esq.
Attorney for Herbert Brownell, Jr.
Attorney General of the United States and
Atlantic Assets Corporation
Department of Justice
Washington 25, D. C.

Pehle, Lesser, Mann, Riemer & Luxford, Esqs.
Attorneys for Petitioner
1210 Eighteenth Street, N. W.
Washington 6, D. C.

370 | Filed April 24, 1956 |

AFFIDAVIT IN RESPONSE TO AFFIDAVIT OF RALPH G. ALBRECHT, ESQ., SWORN TO APRIL 11, 1956

DISTRICT OF COLUMBIA ss

JAMES H. MANN, being duly sworn deposes and says:

I am a member of Pehle, Lesser, Mann, Riemer & Luxford, attorneys for the petitioner and I am fully familiar with all of the proceedings had heretofore herein.

I hereby repeat and reallege, and incorporate herein by reference, equally as though the same were here fully set forth all of what is set out in my affidavits of November 25, 1956, and December 20, 1955, referred to on page 4 of the affidavit of Ralph G. Albrecht herein sworn to April 11, 1956, and in my affidavits of March 7, 1956, and March 12, 1956, referred to at page 5 of Mr. Albrecht's said affidavit.

The proceeding before Judge Youngdahl was on the petitioner's application for a determination of the amount of Mr. Albrecht's fees and disbursements to be paid by petitioner and for an accounting of the $3,500 theretofore paid to him on behalf of petitioner on account thereof, and to which Mr. Albrecht refers on page 3 of his affidavit of April 11, 1956. A

371 reading of Judge Youngdahl's Memorandum and Order of February 23, 1956, leaves much room for doubt that, as Mr Albrecht assumes at page 4 of his affidavit, the $3,000 00 awarded to him by Judge Youngdahl was in addition to the $3,500 00 which he had already been paid In this connection, it should be noted that while Mr Albrecht claimed total fees and expenses of $35,499 57, all to be borne by petitioner, petitioner claimed that his reasonable total fees and expenses were no more than $9,737 23, only half of which, $4,868 62, should, because of circumstances disclosed in the papers before the Court, be borne by petitioner, and having already paid him $3,500 00, that the balance due from petitioner to Mr Albrecht was $1,368 62 After reciting the substance of these claims, Judge Youngdahl said in his Memorandum and Order of February 23, 1956:

> The Court is of the opinion that the fees and expenses as stated and sought by counsel for the prospective adverse parties [Mr. Albrecht] are high Such fees should not be calculated on the basis of what a lawyer might charge his own clients who retain greater control over counsel However, it is not possible to evaluate fairly the claims made unless and until it is determined the respective interest and responsibility had in the testimony * * * and also other factors relating to fees and expenses This can best be done more fairly and completely * * * by the taking of oral testimony where needed. In the interim we are satisfied that counsel is entitled to some compensation to carry on, so $3,000 00 will be awarded - such sum to be paid by petitioner

Judge Youngdahl made no determination as to Mr Albrecht's expenses (other than that those sought were "high") or upon his "accounting" for the $3,500 00 advanced, and clearly, unless contrary to his express purpose Judge Youngdahl is to be taken as having evaluated the opposing claims, the $3,000 00 awarded cannot be considered as being in addition to the $3,500 00 already paid, as that would have constituted an allowance of compensation on an interim basis of $1,631 38 more than petitioner claimed was due Mr Albrecht from her for fees and expenses in toto: and

that would have involved evaluating the claims, which Judge Youngdahl said he was not doing. Nothing in Judge Youngdahl'a Memorandum and Order of March 15, 1956 altered this situation, and Mr. Albrecht has not

372 to the date hereof tendered petitioner or her attorneys the excess of $500.00 over his allowance which has been paid to him, as aforesaid.

/s/ James H. Mann
James H. Mann

Sworn to before me this 24th day of April, 1956

/s/ Lorraine D. Basich
Notary Public

My Commission Expires June 14, 1958.

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380 [Filed April 30, 1956]

ORDER

Upon consideration of the application of the petitioner, Mrs. Hugo Stinnes, Sr., and the motion of Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, named as expected adverse parties herein, for a determination of the reasonable attorney's fee and travel and other expenses of Ralph G. Albrecht to be paid by the petitioner for services rendered and expenses incurred by Ralph G. Albrecht as Court-appointed attorney for the aforesaid expected adverse parties in connection with the perpetuation of petitioner's testimony abroad, pursuant to the order of July 11, 1955, and upon consideration of the affidavits and memoranda of points and authorities filed in support of and upon the application and motion, and upon consideration of the testimony of Robert F. Wieferich, a witness called on behalf of the petitioner, testimony of H. Struve Hensel and Ralph G. Albrecht, witnesses called on behalf of the aforesaid adverse parties, and after hearing oral argument by Ralph G. Albrecht, attorney for the aforesaid expected adverse parties, and Lawrence S. Lesser, attorney for petitioner, and Robert F. Wieferich, attorney for the Attorney General of the United States and Atlantic Assets Corporation, it is by the Court on this 30th day of April, 1956,

381 ORDERED, ADJUDGED and DECREED:

(1) That Twenty Two Thousand Eight Hundred Dollars ($22,800) is a reasonable attorney's fee for the services rendered by Ralph G. Albrecht on behalf of the aforesaid expected adverse parties in connection with the perpetuation of petitioner's testimony, that said amount is hereby allowed Ralph G. Albrecht, and that the petitioner shall be and is hereby ordered to pay said sum to him;

(2) That in rendering the above mentioned services, Ralph G. Albrecht expended Three Thousand Four Hundred Fifty-nine Dollars and Eighty-seven Cents ($3,459.87) for travel and other expenses, that these expenses were reasonably incurred by him, that said amount is hereby allowed Ralph G. Albrecht, and that the petitioner is hereby ordered to pay said sum to him;

(3) That the bill of Henry F. Butler, local counsel for Ralph G. Albrecht as Court-appointed attorney for the aforesaid expected adverse parties, for services and disbursements in a total amount of One Thousand Six Hundred Ninety-eight Dollars and Seventy Cents ($1,698.70) be and the same is hereby disallowed as expenses to be paid by the petitioner;

(4) That from the total amount of Twenty-six Thousand Two Hundred Fifty-nine Dollars and Eighty-seven Cents ($26,259.87) which the Court by this order has directed the petitioner to pay Ralph G. Albrecht, there be deducted the sum of Three Thousand Five Hundred Dollars ($3,500) heretofore advanced by petitioner to Ralph G. Albrecht pursuant to the order of July 11, 1955;

(5) That from the total amount of Twenty-six Thousand Two Hundred Fifty-nine Dollars and Eighty-seven Cents ($26,259.87) which the Court by this order has directed the petitioner to pay Ralph G. Albrecht, there be deducted the additional sum of Four Thousand Dollars ($4,000) which,

382 pursuant to the order of July 11, 1955, the petitioner deposited on or about August 1, 1955, with the Clerk of the Court, to secure the payment to Ralph G. Albrecht of such attorney's fee and expenses as the Court should direct the petitioner to pay him; and that the Clerk of the Court hereby is authorized and directed to pay the said sum of Four Thousand

Dollars ($4,000) to Ralph G. Albrecht, upon the expiration of ten days after the entry of this Order.

(6) That the petitioner is hereby ordered to pay forthwith to Ralph G. Albrecht the sum of Eighteen Thousand Seven Hundred Fifty-nine Dollars and Eighty-seven Cents ($18,759.87), said sum representing the balance due on the total amount of the attorney's fee and expenses which the Court by this order has directed the petitioner to pay to Ralph G. Albrecht.

/s/ F. Dickinson Letts
Judge

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388 [Filed May 7, 1956]

MOTION FOR REARGUMENT AND RECONSIDERATION

Upon the annexed affidavit of James H. Mann, sworn to May 4, 1956, and all of the proceedings had heretofore herein, petitioner moves for reargument of the motion of Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, expected adverse parties named in the petition, for a determination of the fees and expenses to be paid by petitioner to Ralph G. Albrecht, Esq., their attorney, for his services as such in connection with the taking of petitioner's deposition; and reconsideration of the decision of the Court rendered thereon from the bench on April 26, 1956, and the Order thereon entered April 30, 1956, awarding said Ralph G. Albrecht as attorney for said Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, a legal fee of $22,800.00 and expenses of $3,459.87 for such services, to be paid by petitioner, upon the following grounds:

1. The Court appears to have determined that $22,800.00 is the reasonable value of Mr. Albrecht's services in connection with the taking of petitioner's deposition, and that the whole thereof is to be paid by petitioner, and has allowed the full amount of his expenses.

389 The Order herein of June 13, 1955, designating Mr. Albrecht as attorney for the expected adverse parties, whom he already repre-

sented in related matters, made no provision for the payment of Mr Albrecht's fees or expenses by petitioner, and Mr Albrecht accepted such designation The Order herein of July 11, 1955, required the payment of a reasonable attorney's fee and reasonable expenses to Mr Albrecht by petitioner only because it provided that petitioner's deposition was to be taken in Germany, where petitioner lives, rather than in the District of Columbia, where this proceeding was instituted by petitioner If the Order of July 11, 1955, had provided for the taking of petitioner's deposition in the District of Columbia, there would have been no occasion to provide for the payment of any fees or expenses by petitioner to the attorney for any expected adverse party, and each attorney would have had to look to his own client for his fee and expenses Hence, the reasonable attorney's fee and expenses to be paid to Mr Albrecht by the petitioner within the meaning of the Order of July 11, 1955, are not the whole of the reasonable value of Mr Albrecht's services and all of his expenses, but the amounts, respectively, by which the compensation reasonably due to Mr Albrecht for his services in connection with the taking of petitioner's deposition and his expenses were augmented by reason of the fact that the deposition was taken in Germany rather than in the District of Columbia In determining the "reasonable" attorney's fee and expenses to be paid by petitioner to Mr Albrecht, this consideration should have been taken into account, but apparently was not

390 2 The Court appears to have determined that $22,800 00 is the reasonable value of Mr Albrecht's services, and that the whole thereof is to be paid by petitioner Petitioner was not a client of Mr Albrecht and, accordingly, unlike his clients, she had and could have no control over the time he spent on the matter, which appears to have been a most important factor in the determination of the value of his services A reasonable attorney's fee to be paid by a person who is not the attorney's client should for this reason, if for no other, be substantially less than the fee for attorney's services to his own

client. In determining the "reasonable" attorney's fee to be paid by petitioner to Mr. Albrecht, this factor should have been, but apparently was not taken into account.

3 Contrary to the implication of Mr. Albrecht's testimony, the Order herein of July 11, 1955, did not require the petitioner to advance Mr. Albrecht $1,000.00 against his fees and expenses, or to deposit $4,000.00 with the Clerk of the Court as security for the same. The Order authorized the petitioner to take her own deposition in Germany, but conditioned that authority on her making such advance on or before August 2, 1955. Accordingly, not only had the Order of July 11, 1955, not been entered herein when Mr. Albrecht set about making his reservations to go to Europe promptly after his receipt of the Attorney General's letter of June 29, 1955, but petitioner's authority to take her own deposition in Germany under the Order herein of July 11, 1955, was not actually in force or effect when Mr. Albrecht sailed to Europe on July 16, 1955, as the petitioner had not yet at that time complied with the conditions aforementioned. Mr. Albrecht's trip abroad and attendance in Germany at petitioner's examination was therefore equally for the purpose of another proceeding (that instituted by the Attorney General's letter of June 29, 1955) as for the purpose of this proceeding. In determining the "reasonable" attorney's fee to be paid by petitioner to Mr. Albrecht, the fact that Mr. Albrecht's presence abroad and attendance at her examination was only in part on account of this proceeding should have been, but apparently was not taken into account.

4 The Court, in determining Mr. Albrecht's fees, appears to have taken into consideration statements made in the hearing to the effect that property valued at between fifteen and twenty million dollars is involved. True, petitioner's deposition concerned property having a present value of around fifteen million dollars which was seized by the Government as property of petitioner under the Trading with the Enemy Act. However, petitioner is an "enemy" within the meaning of the Trading with the Enemy Act, as amended, and under

present law is ineligible to receive a return of that property. Before petitioner could receive a return of such property, legislation would have to be enacted by Congress. Accordingly, insofar as petitioner is concerned, what is involved is not property valued at fifteen million dollars but a claim, wholly dependent upon possible fufure legislation and which has only a specula'ive value. If in determining the "reasonable" attorney's fee to be paid by petitioner to Mr. Albrecht,
392 the value of the property, rather than the value of the claim, was taken into account, it should not have been.

5. The fee allowed was excessive

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 - 18th Street, N W
Washington 6, D C
Attorneys for Petitioner

By /s/ James H. Mann

Dated: May 4, 1956

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394 [Filed May 7, 1956]

AFFIDAVIT

DISTRICT OF COLUMBIA SS

James H Mann, being duly sworn deposes and says:

I am an attorney and counsellor at law duly admitted to practice before this Court and a member of Pehle, Lesser, Mann, Riemer & Luxford, attorneys for the petitioner herein, and I am fully familiar with all the proceedings had heretofore herein. I make this affidavit in support of the petitioner's motion for a reargument of the motion of Elsa W. de Wagenknecht and N V Edmund Wagenknecht's Handelmaatschappij, expected adverse parties, for an allowance of fees and expenses to Ralph G. Albrecht, their attorney herein, to be paid by petitioner, and for a reconsideration of the decision thereon, rendered from the bench on April 26, 1956.

Contrary to the implication which the Court may have drawn from statements made by counsel for Mrs. Wagenknecht and the Wagenknecht

company, particularly during the examination of the witness Hensel, so far as petitioner is concerned this proceeding does not involve property of a value of $15,000,000 or more. This is a proceeding to perpetuate testimony under Rule 27 of the Federal Rules of Civil Procedure, and not a possessory action or an action for damages or to try title. True, petitioner's perpetuated testimony relates to her former ownership of property of that value, but that property has long since been vested by the Attorney General under the Trading with the Enemy Act, as enemy property, and
395 it is now owned by the United States. Furthermore, petitioner is an "enemy" within the meaning of the Trading with the Enemy Act, and is presently ineligible under such Act for a return of such vested property even assuming, as petitioner claims, that she was its owner on the dates it was vested. Any right of the petitioner to the return of such property must depend on the enactment of legislation by Congress authorizing the return of vested property to former owners thereof who are "enemies" under existing law. When or whether such legislation will be enacted, is, of course, a question which cannot now be answered. However, Mrs. Wagenknecht, the widow of petitioner's brother, has claimed the vested property as hers, directly and indirectly, and she is not under present law ineligible for a "return" thereof, not being an "enemy" within the meaning of the Trading with the Enemy Act. In view of petitioner's age and health, she instituted this proceeding to perpetuate her own testimony, so that it would be available in the future in the eventualities that Congress hereafter enacted legislation which qualified her to receive a return of vested property and/or the property should be "returned" to Mrs. Wagenknecht or the Wagenknecht company, as the result of the claims filed by them with and against the Attorney General. Thus, what is involved in this proceeding is the taking of testimony to support a claim petitioner or her heirs may possibly be able to assert to the property at some unascertainable time in the future if Congress should in the meantime enact legislation authorizing the return of vested property to persons who are "enemies" under the Trading with the Enemy Act and/or the property should be "returned" to Mr. Albrecht's clients. Obviously, the value of such a claim can be but

a very small fraction of the value of the property, and is at best highly speculative. Accordingly, if in making the award of fees to be paid by petitioner to Mr. Albrecht, the Court took into consideration the value of the property as indicated as aforesaid during the course of the hearing, it is submitted that that could have resulted only from a misunderstanding
396 as to the values actually involved in this proceeding, and the amount of the fee awarded should be reconsidered and appropriately reduced.

Furthermore, contrary to an implication which the Court may have drawn from Mr. Albrecht's testimony, Judge Morris' Order of July 11, 1955, did not require petitioner to advance $1000.00 to Mr. Albrecht against his fees and expenses or to deposit $4000.00 with the clerk as security therefor. That Order merely authorized the petitioner to take her own deposition in Germany, commencing August 15, 1955, and conditioned that authority on her making such advance and deposit prior to August 2. These conditions were not met until on or about August 1. In the meantime, Mr. Albrecht sailed for Europe on July 16, pursuant to arrangements he started to make promptly after his receipt of the Attorney General's letter of June 29, 1955, stating in effect that regardless of the outcome of this proceeding (the Order of July 11 had not yet been agreed to) the Attorney General was going to take the petitioner's testimony, extra-judicially, under his own powers, in Germany on August 1, a date later amended. Thus, it would appear to be clear that Mr. Albrecht's departure for Germany and participation in the examination of petitioner, was no less on account, and for the purposes of the Attorney General's proceeding, than of this proceeding. Under these circumstances, it would seem that Mr. Albrecht should look to his clients (who were the same in both matters) for at least half his fees and expenses. Accordingly, if in making the award of fees and expenses to be paid by petitioner to Mr. Albrecht, the Court failed to take this circumstance into consideration, it is submitted that that could have resulted only from a misunderstanding of the obligations of petitioner under the Order of July 11, 1955, and the dual purpose of Mr. Albrecht's travels and the examination of petitioner, and the fee and expenses awarded should be reconsidered and appropriately

reduced

397 It would appear that the fee awarded to Mr. Albrecht by the Court is in the amount which the Court determined to be the reasonable value of Mr Albrecht's services in connection with the taking of petitioner's deposition in Germany, and that the expenses allowed were all of his expenses. I submit, however, that that is not the proper measure of the "reasonable" fee and expenses to be paid to Mr Albrecht by petitioner under the Order of July 11, 1955 Thus, suppose petitioner had been able to travel to the United States, and in her petition had sought leave to take her own deposition in the District of Columbia, where this proceeding was necessarily instituted because the Attorney General is named as an expected adverse party Could it be assured that in such circumstances the Court would have required, or petitioner would have consented that petitioner pay any part of Mr Albrecht's fee or expenses? Clearly not, I submit And it would seem to follow, that the "reasonable" fee and expenses for which petitioner is obligated under the Order of July 11, 1955, is that additional compensation to which Mr Albrecht may be entitled, and those additional expenses he may have incurred, because petitioner's deposition was taken in Germany rather than the District of Columbia As for the rest, he should look to his clients, as he would have if the deposition had been taken here. Accordingly, if in making the award of fees and expenses to be paid to Mr. Albrecht by petitioner, the Court took as the measure, the full amount of the reasonable value of Mr Albrecht's services in connection with the taking of the petitioner's deposition, and the full amount of his expenses, it is submitted that that could only have resulted from a misunderstanding of the proper measure to be applied, and that the fee and expenses awarded should be reconsidered and appropriately reduced

Assuming again, that the fee awarded Mr Albrecht was the amount which the Court determined to be the reasonable value of his services in connection with the taking of petitioner's deposition and that the expenses allowed were the whole of his expenses, I submit that since petitioner was

398 not Mr Albrecht's client these are not the appropriate measure of the "reasonable" fee and expenses for which she is obligated under the Order

of July 11 As Judge Youngdahl pointed out in his Memorandum and Order herein of February 23, 1956, petitioner did not have the control over Mr. Albrecht that a client would have, and that, accordingly, the fee petitioner would be required to pay would be less than would be required of a client. Petitioner was in no position at any time to ask him how much of a bill she had incurred, and if it was getting too high, to say "halt" to him. Subject only to the power of this Court to terminate her deposition (as it ultimately did) for reasons within its competence, petitioner was at Mr. Albrecht's mercy insofar as concerns the time he put in on the matter. If the time he spent was, as it appears to have been, regarded by the Court as a most important factor in the determination of the fee to be paid by petitioner for Mr Albrecht's services, it is submitted that such a determination could only have resulted from a misunderstanding as to the relationship between Mr Albrecht and petitioner, and that the fee awarded should be reconsidered and substantially reduced

/s/ James H. Mann
James H. Mann

Sworn to before me this 4th day of May, 1956

/s/ Lorraine D. Basich
Notary Public

My Commission Expires June 14, 1958

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399 [Filed May 11, 1956]

AFFIDAVIT OF RALPH G. ALBRECHT IN OPPOSITION TO PETITIONER'S MOTION FOR REARGUMENT AND RECONSIDERATION OF ORDER DATED APRIL 30, 1956

STATE OF NEW YORK)
SS
COUNTY OF NEW YORK)

RALPH G ALBRECHT, being duly sworn, deposes and says:

1 I am the attorney for Elsa W de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, named as expected adverse parties in the petition herein

2 The decision and order dated April 30 was made after an all-day hearing on April 26. All filed papers in this proceeding were before the court, extended arguments on the merits of the motions were made by counsel representing all parties, and witnesses testified on behalf of petitioner and the expected adverse parties.

3 I have read the moving affidavit of petitioner's attorney, and it is my submission that no new facts are contained in the same that were not before the court upon the argument of the motions that have been decided.

400 4 In his affidavit petitioner's attorney seeks to argue that Judge Letts' allowance of a reasonable attorney's fee to me was improper since "this proceeding does not involve property of a value of $15,000,000 or more". Assuming that statement to be accurate, it is not pertinent to a consideration of the question presented on the decided motions. The papers heretofore submitted make it abundantely clear that the amount of fee which I had requested the court to award, was based on the number of hours and days spent by me in attending the perpetuation of petitioner's testimony in Europe. Moreover, petitioner's attorney appears to overlook the fact that Judge Morris' order of July 11, 1955 specifically provided that the amount of my attorney's fee to be paid by petitioner

> "shall be computed on the basis of the time necessarily spent by said attorney in traveling to and from the place of the taking of petitioner's deposition in connection therewith, and attending the taking of said deposition."

5 Petitioner's attorney, in his affidavit (p. 3) seeks to "interpret" the provisions of Judge Morris' order by stating that Judge Morris did not require petitioner to make any advance payments to me. Judge Morris' order speaks for itself, and the strained interpretation given it by petitioner's attorney will not change its language that explicitly ordered petitioner to make certain advances. Moreover, the propriety of the remarks of petitioner's attorney might be questioned since he must recall the extended conversations between counsel respecting the terms of the order, before I agreed to consent to its entry. The papers previously submitted

by me show, and I repeat for the record, that I would not have consented
401 to the taking of the non-resident petitioner's deposition abroad, unless petitioner had agreed to pay to me my expenses in connection therewith and a reasonable attorney's fee. That was thoroughly understood by petitioner's attorney and also by the attorney representing the Attorney General.

6. For petitioner's attorney to speak as though there were two proceedings in connection with which petitioner's testimony was perpetuated, borders on the fanciful. There is nothing in any of the papers submitted on the decided motions that make any reference to two proceedings. Petitioner's testimony was taken solely in connection with the instant proceeding; the transcript of petitioner's testimony on file in this court is entitled in this proceeding alone, and prefaced to it is the order of July 11, 1955 which authorized its taking.

7. It may also not be amiss to state again that I would not have agreed to proceed abroad to attend the taking of Mrs. Stinnes' deposition, merely on the Attorney General's bidding. It was made perfectly clear to the representatives of the Attorney General, and it has been so stated by me in the papers previously submitted, that I would not consent to the perpetuation of Mrs. Stinnes' deposition unless petitioner agreed to pay my expenses and my fee for attending the same abroad.

8. A short answer to the specious arguments of petitioner's attorney respecting the amount of the fee awarded me, is that my application requested an allowance of $30,400, and that the order of April 30, 1956, awarded $22,800 to me. The witness, Hon. H. Struve Hensel, testified at length as to my standing at the bar; and with respect to the reasonableness of the fee which I had requested be allowed, he stated that purely on
402 a time basis, it was his view that $30,400 was "on the low side". The witness then testified at length as to the reasons for his opinion.

WHEREFORE, it is respectfully requested that petitioner's motion for reargument and reconsideration be denied; and if allowed, that the order of the court dated April 30, 1956 be adhered to.

/s/ Ralph G. Albrecht

Sworn to before me this 10th day of May, 1956

/s/ Martina C. Doherty

Martina C. Doherty
Notary Public for the State of New York
Qualified in New York County
No. 31-0979475
Certificate filed with City Register, N Y Co.
Commission Expires March 30, 1957

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405 | Filed May 29, 1956 |

NOTICE OF APPEAL

Notice is hereby given that Mrs. Hugo Stinnes, Sr., the petitioner above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from so much of the Order herein of April 30, 1956 (Honorable F. Dickinson Letts, U. S. D. J.) as allows an attorney's fee of $22,800.00 and expenses of $3,459.87 to Ralph G. Albrecht, attorney for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, expected adverse parties named in the petition herein, to be paid to him by petitioner.

Dated: May 29, 1956

PEHLE, LESSER, MANN, RIEMER
& LUXFORD
1210 - 18th Street, N. W.
Washington 6, D. C.
Attorneys for Petitioner-Appellant

By /s/ James H. Mann

TO:

The Honorable Harry M. Hull, Clerk of
the United States District Court for
the District of Columbia

Ralph G. Albrecht and Henry F. Butler, Esqs.
c/o Henry F. Butler, Esq.
1039 Investment Building
Washington 5, D. C.
Attorneys for Elsa W. de Wagenknecht and
N. V. Edmund Wagenknecht's Handel Maatschappij,
Expected Adverse Parties-Appellees

Robert J Wieferich, Esq
Department of Justice
Washington 25, D. C.
Attorney for Herbert Brownell, Jr.,
Attorney General of the United States, and
Atlantic Assets Corporation
Expected Adverse Parties-Appellees

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417 [Filed May 31, 1956]

ORDER

Upon consideration of the petitioner's motion for reargument and reconsideration of the Court's order of April 30, 1956, awarding expenses and counsel fees to Ralph G Albrecht, Esq., together with the affidavit and memorandum of points and authorities in support of said motion and upon consideration of the affidavit of Ralph G Albrecht in opposition to said motion, it is by the Court on this 31st day of May, 1956,

ORDERED, ADJUDGED and DECREED:

(1) That the motion for reargument and reconsideration shall be and is hereby denied

/s/ F Dickinson Letts
Judge

SEEN:

PEHLE, LESSER, MANN, RIEMER & LUXFORD,

By /s/ James H Mann
A Member of the Firm
Attorneys for Petitioner

/s/ James H. Falloon
Attorney for the Attorney General of
the United States and the Atlantic
Assets Corporation

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418 Filed June 12, 1956

PETITIONERS EXHIBIT NO. 1

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D. C.

In reply, please refer to file number

JDH:RJW:ran

June 29, 1955

Received June 30, 1955
Pehle, Lesser, Mann, Riemer & Luxford

Pehle, Lesser, Mann, Riemer & Luxford, Esquires
1210 - 18th Street, N. W.
Washington 6, D. C.

Ralph G. Albrecht, Esquire
c/o Peaslee, Brigham, Albrecht & McMahon
501 Fifth Avenue
New York, New York

Re: Wagenknecht v. Brownell, et al.
Wagenknecht, et al. v. Brownell, et al.
Petition to Perpetuate the Testimony of
Mrs. Claere Hugo Stinnes

Gentlemen:

We have been served with notice that on July 11, 1955 Mrs. Hugo Stinnes, Sr., will apply to the United States District Court for the District of Columbia for an order authorizing the taking of her own deposition upon oral examination for the purpose of perpetuating her testimony. As you recall, at the previous hearing before Judge Curran on June 8, 1955 in this matter the Attorney General of the United States appeared and consented to an order for the perpetuation of petitioner's testimony provided that it could be done on or about July 1, 1955 and petitioner would undertake to make herself available at a specific place on that date. Obviously, it is impossible now to adhere to that schedule and we, therefore, take this opportunity of giving all parties in interest our views in advance of the hearing of July 11, which views we shall communicate to the Court at that time.

In connection with our vesting of the Stinnes properties we presently have pending in the District Court in this jurisdiction two suits against the

Attorney General of the United States as successor to the Alien Property Custodian brought by Mrs. Wagenknecht and certain co-plaintiffs seeking the return of approximately $1,200,000. An offer of settlement has been made by the plaintiff in those actions and the Attorney General of the United States notified the plaintiff that such offer could only be acted upon after the deposition of Mrs. Stinnes was taken and reviewed. Chief Judge Laws was informed of this at the pre-trial hearing in these cases in February of this year and stated that the parties would be given until October to take the deposition and accept or reject the offer of settlement -- otherwise the cases would be set for trial in October.

419 In addition, both Mrs. Wagenknecht and Mrs. Stinnes have filed a number of administrative claims for the return of vested property and with respect to the majority common stock of Hugo Stinnes Corporation which has a present market value of approximately $15,000,000 these claims of Mrs. Wagenknecht and Mrs. Stinnes appear to be in conflict. As you know, counsel for the Attorney General attempted to take the deposition of Mrs. Stinnes in the pending litigation in Europe in 1953 and in 1954 but on neither occasion was Mrs. Stinnes available. After the Attorney General's decision to require the testimony of Mrs. Stinnes before evaluating the offer of settlement all parties in interest were informed of his desire to take the deposition immediately and, in fact, a tentative date of April 20, 1955 was fixed. On April 1, 1955, however, counsel for Mrs. Stinnes received a cable from her stating that she was unable to testify because of illness and suggesting that it be delayed until July; at the same time counsel for Mrs. Wagenknecht refused to stipulate to the proposed petition to perpetuate Mrs. Stinnes' testimony. Thereafter the pending proceeding to perpetuate Mrs. Stinnes' testimony was begun and counsel for Mrs. Wagenknecht has objected both to the service of process and also to the jurisdiction of the Court. It is apparent that these proceedings may be lengthy ones and that in any event they may well be incomplete and no testimony taken prior to October.

You will appreciate that it would be intolerable for the Attorney General of the United States to go to trial in October lacking important

testimony because of a conflict of views between yourselves as to the propriety of perpetuating testimony; and yet, subsequently, be compelled to take that same testimony in administrative proceedings or after the proceedings on the petition to perpetuate have been finally determined. The only interest of the Attorney General of the United States is to secure this testimony promptly. We are prepared to stipulate with either party, or both, that if the sworn testimony of Mrs. Stinnes can be taken in the near future before the United States Consul in Duesseldorf, Germany, which we understand is her home, that testimony, insofar as it is relevant, competent and material, may be used in any proceeding under the Trading with the Enemy Act, judicial or administrative, to which the Attorney General is a party.

We, therefore, take this opportunity of notifying you that pursuant to the powers vested in the Attorney General of the United States and in myself under the Trading with the Enemy Act, as amended, we are requiring Mrs. Stinnes to appear before the United States Consul at Duesseldorf, Germany, on August 1, 1955 for the purpose of giving sworn testimony relating to the claims which she has filed with this Office and for the purpose of giving sworn testimony with respect to the issues in the pending litigation brought by Mrs. Wagenknecht. Your attention is specifically called to the following provision of the Rules of Procedures for Claims of the Office of Alien Property (Code of Federal Regulations, Title 8, Sec. 502.25(g)).

420 (g) A claim shall be deemed abandoned when after request to do so the claimant has not furnished relevant information in support of his claim, or where by virtue of his failure to respond to inquiries regarding the claim it appears that he does not wish to pursue it further. The Hearing Examiner may on his own motion dismiss a docketed claim as abandoned when the claimant fails to produce any information or document ordered so produced by the Hearing Examiner.

We are not, of course, opposed to the present petition to perpetuate and if the Court is disposed to order the perpetuation we see no reason why

it cannot be done on August 1, 1955. In any event, however, for the reasons which we have discussed above you are advised that we intend to proceed under our administrative powers to take the testimony on that date.

If you have any questions concerning this matter or wish to arrange details for the convenience of counsel, please communicate directly with Messrs. James D. Hill, or Robert Wieferich of my staff.

Sincerely yours,

/s/ Dallas S. Townsend
Dallas S. Townsend
Assistant Attorney General
Director, Office of Alien Property

cc: Henry F. Butler, Esquire
1039 Investment Building
Washington, D. C

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421 | Filed June 12, 1956 |

PETITIONERS EXHIBIT NO. 2

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D. C.

In reply, please refer to file number

JDH:RJW:ran

Received July 20, 1955
Pehle, Lesser, Mann, Riemer & Luxford

9-21-2466
9-21-2512
9-21-2646

Pehle, Lesser, Mann, Riemer & Luxford, Esquires
1210 - 18th Street, N. W.
Washington 6, D. C.

Ralph G. Albrecht, Esquire
c/o Peaslee, Brigham, Albrecht & McMahon
501 Fifth Avenue
New York, New York

Re: Wagenknecht v. Brownell, et al.
Wagenknecht, et al. v. Brownell, et al.
Petition to Perpetuate the Testimony of
Mrs. Claere Hugo Stinnes

Gentlemen:

In accordance with the oral understanding reached between counsel on July 8, 1955, in the discussions which preceded the entry of the order to perpetuate the testimony of Mrs. Claere Hugo Stinnes, this will confirm that the date of August 1, 1955, which was set forth in our letter of June 29, 1955 for the taking of Mrs. Stinnes' testimony, is hereby set for August 15, 1955, to coincide with the date contained in the Order. We understand that this date is satisfactory to all parties concerned, although Mr. Albrecht has signified his desire to commence the deposition at an earlier date. In view of the provision of the consent order that it may become null and void in certain circumstances you will appreciate that our change of date is without prejudice to the right of the Attorney General to proceed on August 15, 1955, for the reasons expressed in our letter of June 29, 1955.

This letter will also confirm our agreement that we are prepared to stipulate that the deposition of Mrs. Stinnes may be admitted as evidence in any pending claims proceeding in this Office either of Mrs. Stinnes or of Mrs. Wagenknecht to the same extent as it may be admissible in a court of law under the terms of the consent order referred to above. Please advise if such a stipulation is acceptable in the claims proceeding in which you are counsel.

Sincerely yours,

/s/ Paul V. Myron
Paul V. Myron
Deputy Director
Office of Alien Property

cc: Henry F. Butler, Esquire
1039 Investment Building
Washington, D. C.

422 Filed June 12, 1956

PETITIONERS EXHIBIT NO. 3

PEHLE, LESSER, MANN, RIEMER & LUXFORD

1210 Eighteenth Street, N. W.
Washington 6, D. C.

July 20, 1955

Mr. Paul V. Myron
Deputy Director
Office of Alien Property
Department of Justice
Washington 25, D. C.

Re: Wagenknecht v. Brownell et al
Wagenknecht et al v. Brownell et al
Petition to Perpetuate the Testimony
of Mrs. Claere Hugo Stinnes

Dear Mr. Myron:

Reference is made to your letter of July 19, 1955, supplementing Assistant Attorney General Townsend's letter of June 29, 1955, with respect to the above-captioned matters.

The taking of Mrs. Stinnes' deposition under the consent Order entered on her petition to perpetuate her testimony, has now been set over by agreement between counsel to August 30, 1955, or such earlier date on or after August 15, 1955, as her health may permit and counsel may unanimously agree on. This will confirm the understanding reached between Mr. Lesser and Mr. Wieferich on the telephone on July 20, 1955, that the August 15 date set in your letter of July 19, 1955, is to be deemed to be modified accordingly, so that both dates will coincide.

We accept your offer to stipulate that the deposition of Mrs. Stinnes taken under the consent Order entered on her said petition may be admitted as evidence in any claims proceeding of Mrs. Stinnes to secure the return of vested property to the same extent as it may be admissible in a court of law.

Very truly yours,

PEHLE, LESSER, MANN, RIEMER & LUXFORD

By

423 Filed June 12, 1956

PETITIONERS EXHIBIT NO. 4

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D. C.

In reply, please refer
to file number

9-21-2466
9-21-2512
9-21-2646

Received July 27, 1955
Pehle, Lesser, Mann, Riemer
& Luxford

JDH:RJW:ran

Pehle, Lesser, Mann, Riemer & Luxford
1210 Eighteenth Street, N. W.
Washington 6, D. C.

Re: Wagenknecht v. Brownell, et al.
Wagenknecht, et al. v. Brownell, et al.
Petition to Perpetuate the Testimony
of Mrs. Claere Hugo Stinnes

Gentlemen:

This will acknowledge receipt of your letter of July 20, 1955, in which you confirm our understanding with respect to the postponement of Mrs. Stinnes' deposition and also accept our offer to stipulate to the admission of Mrs. Stinnes' testimony in any claims proceeding.

Sincerely yours,

Paul V. Myron
Deputy Director
Office of Alien Property

By /s/ James D. Hill
James D. Hill
Chief, Litigation Section

424 Filed June 12, 1956

PETITIONERS EXHIBIT NO. 5

February 10, 1950

William J. Hughes, Jr. Esq.,
821 15th Street, N. W.,
Washington, D. C.

Dear Mr. Hughes:

The District Court now has under consideration the appointment of a Special Master to hear the pending case of I. G. Chemie v. McGrath, Civil Action No. 4360-48. I am writing to you to inquire whether you would be available, if appointed.

The case is one under the Trading with the Enemy Act, brought by a Swiss plaintiff, for the return of vested property. The vested property is stock in the General Aniline & Film Corporation which has been valued at many millions of dollars, as well as cash in the amount of approximately two million dollars. A copy of the complaint and the amended answer is enclosed for your information. I also enclose a draft order which will give you a general idea of the duties of the Special Master. The order is, you will understand, a draft that may be varied by the Court.

The Court will expect the Master immediately to familiarize himself with the pleadings and the file and with the substantial transcript of the depositions taken to date. The Master will then be expected to resume the deposition of Hans Sturzenegger, now in recess. Aside from depositions, which may be substantial, there will be the hearing and consideration of the case on its merits. A substantial amount of your time will be required within the next three months. Travel abroad may prove necessary.

I should like it understood between the Court and the Master that the compensation to be allowed will be based, in general, on a standard of $25.00 per hour of work performed, not to exceed $125.00 per day, except in the event of travel by the Master, in which event his compensation will be at the rate of $200.00 per diem. The per diem will be exclusive of the cost of transportation but will include other personal living expenses. Any quarters or other services required for the conduct of the

proceedings will be provided by the parties or may be paid for by the Master and charged as expenses.

425 Please feel free to discuss with counsel for either party or with me any questions you may have, either with respect to the estimated length of the proceedings or otherwise.

So far as I have been able to ascertain, there is no reason why you are not in a position to serve impartially in this case and counsel for the respective parties have indicated there is no objection to you. However, of course, I shall appreciate your advising me if you know of any possible reason why you could not be entirely fair to the claims of each side in the event this matter is referred to you.

Sincerely yours,

BJL/gpc
Encs.

This is a copy of a letter taken from the files of Chief Judge Bolitha J. Laws. The original letter was signed by Judge Laws and sent to Mr. Hughes on the date indicated.

/s/ Ellis B. Strickler
Secretary to Chief Judge Laws

April 25, 1956

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426 [Filed June 12, 1956]

PETITIONERS EXHIBIT NO. 6

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK

WILLIAM A. ATKINS,	)	
Plaintiff,	)	Civil Docket No. 45-430
- against -	)	Civil Non-Jury
SIDENY GRAYSON,	)	Calendar No. 201
Defendant.	)	

A motion having been made by the defendant, Sidney Grayson, who is now resident of Old Manor House, Seisdon, Near Wolverhampton,

Staffordshire, England, for the issuance of a commission to take the defendant's testimony by written interrogatories and for a stay of the trial of this action pending the return of the commission, and said motion having duly come on to be heard, and after reading and filing the notice of motion dated December 28, 1950, the pleadings in the above entitled action, the affidavit of Benjamin H. Trask, sworn to the 28th day of December, 1950, and the undated affidavit of defendant, Sidney Grayson, in support of the said motion, and the affidavit of C. Alexander Capron sworn to the 29th day of December, 1950, in opposition thereto, and after hearing Benjamin H. Trask, of counsel for the defendant in support of the said mo ion and Francis O. Mayer, of counsel for the plaintiff in opposition thereto, and the Court having rendered an opinion, and on the instructions of the Court; it is

427 ORDERED, that the said motion be and the same hereby is conditionally granted to the extent hereinafter set forth; and it is further

ORDERED that an open commission issue out of the and under the Seal of this Court directed to the United States Consul General, Consul, Vice Consul or Consular Agent, at Birmingham, England, authorizing him to take the testimony of the defendant, Sidney Grayson, as a party on oath, upon oral examination by the respective parties herein on any matter not privileged which is relevant to the subject matter involved in this action, pursuant to the provisions of Rule 26xx EW of the Federal Rules of Civil Procedure, a copy of which is hereto annexed, marked Exhibit "A" and made a part hereof, and directing him to reduce the said testimony to writing, cause the deposition to be signed by the defendant and certify and return the same together with the commission of the Clerk of this Court with all convenient speed; and it is further

ORDERED, that the said defendant, Sidney Grayson, in accordance with Rule 34 of the Federal Rules of Civil Procedure, a copy of which is hereto annexed and marked Exhibit "B", produce before the commissioner on said examination all documents, papers, books, accounts and letters not privileged in his possession, custody or control which constitute or contain evidence relating to any of the matters within the scope of the ex-

amination; and it is further

ORDERED, that as a condition for the taking of such testimony the said defendant shall pay all the expenses of said commissioner, shall at his expense supply the plaintiff with a copy of his deposition and shall pay plaintiff's counsel in New York in United States currency the sum of $500.00 to partially cover the plaintiff's expenses in sending an attorney to England to represent him upon the defendant's examination, or, at the
428 plaintiff's option, shall pay to the plaintiff such expenses as the plaintiff may incur in retaining counsel in England to represent him upon the defendant's examination, in a sum in British currency not to exceed the equivalent of $250.00 at the current rate of exchange at the time of such payment, which said sum shall be paid in England to such counsel designated by the plaintiff; and plaintiff within ten days from the entry of this order shall serve on the defendant's attorney a notice specifying whether he has elected to send counsel to England or to engage English counsel, and the payments herein provided for shall be made by the defendant within thirty days from the giving of such notice; in the event plaintiff's notice to defendant's attorney specifies that the plaintiff has elected to engage English counsel and such notice fails to designate the name of such counsel, the defendant shall have thirty days from the date of such designation, to be given in writing to the defendant's attorney, within which to make the payment herein directed to such English counsel in England; in the event Plaintiff fails to give notice of election within the aforesaid ten day period, then defendant shall be required to pay a sum not to exceed the equivalent of $250.00 in British currency, which payment shall be made at the time of the hearing; and it is further

ORDERED that all the expenses herein provided shall be borne by the defendant regardless of the outcome of this action and shall not be deemed items of costs to be taxed by either party against the other; and it is further

ORDERED that if the defendant complies with the conditions of this order, the trial of this action is hereby stayed until ten days after the return of said commission, but if the defendant fails to comply with the

429 conditions of this order, then the defendant's motion for the issuance of a commission is in all respects denied and the trial of this action is stayed only until ten days from the Court's determination, after notice to the attorney for the defendant and upon proof satisfactory to the Court of the defendant's default in complying with the conditions of this order; and it is further

ORDERED, that the Court retain jurisdiction of this order and the commission issued thereunder, in order that either party may apply, on notice, at the foot hereof, for extensions of time, and for instructions as to the execution of this order and said commission.

Dated: New York, New York
February 3rd, 1951

Edward Weinfeld (Sgd)
U.S.D.J.

A TRUE COPY
William V. Connell, Clerk
By /s/ J. Livingston
Deputy Clerk

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

(Filed July 21, 1956)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE PETITION OF	)	
	)	
MRS. HUGO STINNES, SR.	)	Civil Action No. 2158-55
	)	
TO PERPETUATE HER OWN TESTIMONY	)	

Washington, D. C.,

Thursday, April 26, 1956

Before Judge F. DICKINSON LETTS at 10 a. m. today, on application for determination of attorney's fee.

Appearances:

For petitioner:

Mr JAMES H. MANN
Mr LAWRENCE S. LESSER

For the Attorney General and Atlantic Assets Corporation:

Mr ROBERT J. WIEFERICH

For Mrs Elsa W de Wagenknecht and N V Edmund Wagenknecht's Handelmaatschappij:

Mr RALPH G. ALBRECHT
Mr HENRY F BUTLER
Mr JOHN GEYER TAUSIG

- - -

3 PROCEEDINGS

THE DEPUTY CLERK. In re Mrs. Hugo Stinnes, Civil Action No. 2158-55.

MR. ALBRECHT. If Your Honor please, I appear this morning for the moving party, who has been named as a prospective adverse party, in a proceeding under Rule 27 of the Federal Rules seeking the perpetuation of the testimony of the petitioner.

THE COURT. Yes.

MR. ALBRECHT. And the question before Your Honor this morning is as to the amount of the fee and expenses that should be allowed to me as attorney for the expected adverse parties, in connection with the taking of the deposition of the petitioner in Europe.

THE COURT. Yes.

MR. ALBRECHT. This is not a very complicated matter, if Your Honor please. The proceeding is under Rule 27, which I think is not invoked very much; but anyone can come into the jurisdiction and seek to perpetuate testimony for the purposes of such litigation as it may be sought to bring in the future. And in that connection the expected adverse parties have to be named so that they are given an opportunity to come in and cross-examine when that testimony is being perpetuated.

4 I represent Mrs. Elsa W. de Wagenknecht and a Dutch corporation who have been named as expected adverse parties.

My friend, Mr. Robert Wieferich, represents the Attorney General and a Delaware corporation, who have also been named as adverse parties.

The petition seeking to perpetuate the testimony of the petitioner points out as the reasons therefor that the petitioner is an elderly lady who is the widow of Hugo Stinnes, who was a well known German industrialist and who died in 1924, and the petitioner, being 82 years of age, and being in frail health, seeks this perpetuation of her testimony.

She points out in her petition that she has filed a claim with the Office of Alien Property for the release of certain vested property for which claims have already been filed by my clients, and therefore feeling that under legislation or by determination in the Attorney General's office

if that property should be released to us, they want to be in a position to bring an action for unlawful withholding against my clients, against the Attorney General and another corporation.

As I have stated, Mrs. Stinnes, the petitioner, is a non-resident of the District, who comes in here to avail herself of what is offered here under the Federal Rules, and she uses the facilities afforded by this forum

5 to perpetuate her testimony, in connection with such litigation as she may wish to bring in the future. She doesn't come into the forum to testify, but she requested that her testimony be taken in Europe. And the bone of contention between her attorneys and us has been that we insist that under those conditions she must bear all of the expenses of the taking of that deposition.

If I may divert for a moment from this particular proceeding, I would like to point out what Your Honor already knows, that there is litigation pending in this Court between Mrs. Wagenknecht and the Attorney General. The litigation was brought to secure the return, the release, of property that was vested by the Attorney General under the Trading With the Enemy Act. The findings of fact incorporated in the vesting orders, pursuant to which this property was vested, were to the effect that this property was the property of Mrs. Stinnes and of members of her family.

So that after these actions were pending, were at issue, one of the first jobs that we addressed ourselves to was to clear the Stinnes angle, as it were, in order to secure testimony and other evidence to the effect that there was no Stinnes interest in the property which we claimed but which had been vested on the basis that it was Stinnes property.

6 And so by agreement with the Department of Justice in 1953, a representative from the Attorney General and I went abroad to take Mrs. Stinnes' testimony. We didn't succeed. We had agreed to take the testimony of other witnesses at the same time. We came to Dusseldorf, and the American consul general had given notice that we were there and would like to take her deposition; and Mrs. Stinnes never appeared.

We took that opportunity, however, to take the testimony of her son, Otto, who held Mrs. Stinnes' power of attorney in the management of her

affairs from 1950 on And we also took the testimony of a witness named Unger who is the director of the finance department of the Stinnes business.

And so we came back to the United States and I felt satisfied in my mind that we had disposed of the Stinnes angle, because these witnesses testified that none of the property which we claimed had ever been Stinnes property

While I was over there I had also intended to take the testimony of the son, Hugo, Junior, because he had held his mother's power of attorney and managed all of her affairs practically from the date of the death of the father in 1924, right down to 1950, when there was a disagreement with his mother We didn't take his testimony, because he had agreed to testify in person in this Court when we came to trying the

7 issues

This experience in 1953 satisfied me completely, as we had cleaned up this Stinnes Angle It did not satisfy the Attorney General, because he was very anxious to examine Mrs Stinnes So by agreement in 1954, the following year, we went abroad again and the consulate in Dusseldorf notified Mrs Stinnes, and she didn't appear, and we were informed she had left the country and gone to Switzerland in order not to have to appear.

Again we took that opportunity, in order not to come home with empty hands, to take the deposition of the son, Hugo, at that time. And then we came back.

In my view, then, the Stinnes angle, for purposes of a trial in these Wagenknecht cases in this Court, had been covered But at this juncture, in February 1955, just a few months after Mr Wieferich and I came back from Europe, the petitioner here, Mrs. Stinnes, filed a claim with the Alien Property Custodian seeking the return of what she claimed was allegedly her own property, but which was substantially all of the property for which we had previously filed claims and for which some suits were pending

Then the petitioner's attorneys approached us with the view of taking the testimony of Mrs Stinnes She had now filed a claim and they now wanted to take her testimony, presumably for use in connection with that

8 claim, but also for purposes of the future litigation which they claimed might be undertaken by them. The petitioner's attorneys said they couldn't produce her in Washington and they wanted to take her testimony abroad, and would we consent. We said we would, even though I thought there was no need for that testimony, so far as we were concerned. But as the Attorney General was most anxious to have her testimony, we agreed to consent to the taking of her deposition, provided all of our expenses were paid. And to that the petitioner's attorneys wouldn't agree.

The Attorney General I think had an understanding of our position but was very unhappy that he was not obtaining the testimony of Mrs. Stinnes, by this disagreement between counsel. And not until May of that year, three months later, did the petitioner's attorneys finally file the petition which is the basis of this proceeding before you this morning.

Thereupon petitioner's attorneys initiated once more negotiations in which they for the first time agreed to pay our expenses, or at least some of our expenses. And these negotiations continued right until the morning of July 11, when we appeared before Judge Morris; and we consented to the order that Judge Morris signed that morning, when we previously had reached the agreement with petitioner's attorneys, that they
9 would pay our traveling expenses and my expenses while I was over there, and also a reasonable attorney's fee, which was to be allowed after we came back.

THE COURT: Was this put in Judge Morris' order?

MR. ALBRECHT: All in Judge Morris' order.

I might say, furthermore, that when the petition to perpetuate this testimony first came before this Court, in June, before Judge Curran, we opposed the same, because we contended that there had been no service of the petition on my clients. And the Court -- Judge Curran, in his order of June 13 -- directed them to comply with the provisions of the statute so far as service was concerned, and then went on to appoint me as the attorney for Mrs. Wagenknecht and the other expected party, the Dutch corporation, to represent them in connection with the taking of this deposition abroad.

THE COURT: That was in June?

MR. ALBRECHT That was on June 13, Judge Curran's order.

THE COURT And when was Judge Morris' order?

MR. ALBRECHT. That was on July 11, sir

Now, Judge Morris' order directed that the deposition be commenced in Dusseldorf on August 15 While these negotiations were going on with the petitioner's attorneys, and in view of the Attorney General's insistence that this testimony be taken, whereupon, as I have stated, we agreed to consent, even though we no longer had any interest in connection with the Wagenknecht litigation and therefore insisted that all our expenses be paid. I made at that time reservations to go abroad on a steamer. And as Your Honor undoubtedly knows, that is the height of the travel season; and as everybody seems to be going to Europe these days, it is extraordinarily difficult to change reservations once one has them -- or even to obtain them

In any event, we appeared before Judge Morris on the 11th of July, and I then had tentative reservations to sail on July 16 And when it became apparent that the deposition had been ordered to commence on August 15, when Judge Morris signed the order, I decided to sail on July 16 and did sail on July 16, which was about four weeks before the taking of the deposition I figured that I would require several weeks or so on to prepare for the taking of the deposition and to consult with my clients, who are abroad

I was hardly on the high seas -- two days, I believe -- when my office radioed me that petitioner's attorneys had apprised us that the petitioner was hospitalized, and they suggested that the taking of that deposition be postponed for two weeks, until August 30

Of course I was on my way There was nothing else to do, of course, and we agreed to consent, and by a stipulation entered into the deposition was then moved back to August 30 And it was also provided that the payment of such expenses and so on, that Judge Morris' orders had provided should commence with August 15, still commence with August 15. And that was the stipulation that was then entered into between counsel.

We come now to August 30, and we are in Dusseldorf, and we commence the deposition, the taking of the deposition, for the purpose of perpetuating the testimony of this petitioner. Now the petitioner, as stated in her petition, was an elderly lady. She was then 82, I believe. They stated she was in frail health, which was certainly true, and it had deteriorated, her health did, in the course of the taking of her deposition. Unfortunately the witness suffered from ulcers of the stomach, duodenal ulcers; and for 29 years, as it later developed, she had been under intermittent treatment for these duodenal ulcers; and periodically she would enter the clinic of the University Hospital in Hamburg, to be under the care of one of the world's great gastroenterology experts up there, Dr. Berg whose name figures also in these papers.

So when we came to Dusseldorf and were confronted with this frail witness, who furthermore had just been discharged from treatment in Hamburg, counsel agreed that we would try to examine the witness and set a hearing for two and a half hours for the beginning, from three in the afternoon until five-thirty, with an intermission in between. As she was an ulcer case, she didn't eat regularly and had to take some sustenance while the examination was going on. But as the examination developed, these short intermissions became longer and longer, so that finally they consumed 30 minutes of that two-and-a-half-hour time.

The testimony could not be taken every day. It was continued from time to time, and sometimes for several days -- and at the end of the Dusseldorf examination, for two weeks, as a matter of fact.

The witness was not sufficiently familiar with the English language, as a German, of course, so that she had to be examined through an interpreter. Every question had to be interpreted into German. Every answer had to be translated into English. And needless to say, if Your Honor please, with a witness of that kind it was exceedingly difficult to make much progress.

Furthermore she was bothered with defective hearing and she had a hearing aid; and, in the nature of hearing aids, that one didn't always function and required a little attention. In any event, at times the witness didn't hear too well and questions had to be repeated.

At times her mind wandered a little bit, and that was particularly true when the deposition in Dusseldorf came to an end and was continued several weeks later to the University Hospital at Hamburg, in her room. And Dr. Berg informed us she was being given sedatives; and that also contributed, naturally, to the difficulty of the examination and brought about unresponsive answers to questions and very long answers that were not altogether satisfactory to cross-examining counsel.

That slowed up the taking of the deposition enormously and created a very arduous job for counsel for the expected adverse parties. If the examination was scheduled for two and a half hours a day, with all those difficulties of translation, as well as the other difficulties I have mentioned, I think, and I believe Your Honor will agree -- in any event it is our submission -- that the effective cross-examination of the witness probably never took more than an hour a day.

The length of the deposition -- it commenced on August 30, Your Honor will remember, and ended October 16 in Hamburg. That is, the entire period of the taking of the deposition was 47 days. Actually she was examined a great deal less, because of the continuances that constantly had to be given. And yet to obtain that deposition, if Your Honor please, I was abroad 97 days. And while we had no control over the adjournment or commencement of the taking of the deposition, nevertheless it did increase my time abroad and resulted in my taking a short vacation in the beginning.

So that I did not come into court and suggest, even though I think I might be justified in doing so, that I be compensated for the entire period of time that I was abroad in the interests of taking the deposition. But in accordance with Judge Morris' order and the stipulation between counsel, I have put forward a request that I be compensated for 76 days in connection with the taking of the deposition. And that I compute on the basis of 66 days from August 15 to October 16, and 10 days travel time going to and from the examination. Needless to say, during all that time the time was not completely spent on taking the deposition of the witness, by reason of her frail health and for other reasons. But naturally my time was consumed

-- and I might add -- wholly for this matter and for no other matter, as petitioner's attorney would like to have the Court believe -- in conferences with counsel in connection with this matter, in completing the transcript of the testimony in the absence of the witness, in talking with people abroad who could shed light and assist me in preparing for cross-examination, and in examining, also, voluminous documents that were useful in connection with my cross-examination. And this activity of mine took place not alone in Dusseldorf and Hamburg; it took place in other parts of Germany also.

15 Now to come back, if Your Honor please, to Judge Morris' order of July 11, the petitioner's attorneys had finally, on our insistence, agreed to bear our expenses in connection with the taking of this deposition. And we thereupon signed a consent, on that condition, to the order that was signed by Judge Morris on July 11. And that order, if Your Honor please, states in so many terms that all the expenses of the taking of the deposition were to be borne by the petitioner. And then it goes into some detail respecting the expenses to be borne by the petitioner.

And then the order takes up the matter of the Attorney General's expenses of his representative, and per diem, traveling expenses, et cetera. And the Attorney General was good enough to waive any advance on account of those expenses. But under a provision of the Trading With the Enemy Act he was empowered to defer reimbursement until such time as he released property to the petitioner, and then he would deduct his statutory per diem and travel expenses that were incurred in connection with his representative's going over there and participating in the taking of this testimony.

And then the order of Judge Morris goes on to take up my case, and it provides specifically that they should make a $1,000 advance payment, which I maintained would be required for traveling expenses. The order

16 directs that for every week that the deposition is being taken abroad they were to make a payment of $250 towards living expenses in Europe. And it further directs, in view of the fact that the petitioner is a non-resident of the District, that some deposit be made with the Clerk of this Court. This was in compliance with our insistence that we ought to have

something in hand to guarantee payment for the expenses that would necessarily incur And they actually did deposit, I am informed, $4,000 with the Clerk of this Court as a security for such allowances as might be made by the Court on our return for attorney's fee and my travel and other expenses.

In Annex D of my affidavit I have set forth all of the expenses that we have had in connection with the taking of the deposition. Maybe I should correct myself. I don't set forth all the expenses. I set forth the major expenses, and they come to about $3,500, which is approximately the amount which they advanced me. A thousand dollars and $2,500 -- $3,500 -- was the amount that they had actually advanced me.

And I would like to offer this morning, in view of the insistence by petitioner's attorneys that we produce the vouchers for this reasonable recital of expenses, even though I think Your Honor will agree the extent of my expenses must be very well known to the petitioner whose attorney
17 who was over there was living in the same hotel with me and was up against the same high cost of living that has to be contended with in Germany today.

Now, if Your Honor please, as I was a Court-appointed attorney to appear for the expected adverse parties, under the rules of this Court we also noted the appearance of local counsel, Mr Henry Butler, who is associated with me in this case.

While I was abroad a motion was brought on behalf of my clients, in view of the length of the deposition there, that the petitioner be compelled to put up further security The petitioner's attorneys opposed that and moved on their own part that the taking of the deposition be terminated.

That was heard while I was away from the country and couldn't look after those problems of my clients, and my office in New York, as well as Mr. Butler, appeared in the Court here in connection with those applications. And Mr Butler has put in a reasonable bill for his services, I believe, and expenses, to a total of about $1700.

So that when I ask Your Honor's allowance of my expenses in the neighborhood of $3,500, I also ask Your Honor to be good enough to allow the amount of Mr. Butler's bill in the amount of $1,700.

Now, so far as the attorney's fee is concerned. I have set forth in my affidavit I think all the factors that Your Honor will need for the purpose of deciding what a reasonable attorney's fee should be under the circumstances. And if Your Honor will allow me just a brief time, I would like to remind Your Honor once more that throughout the taking of this deposition I was necessarily abroad out of the country 97 days. But, as I have stated before, I have thought in fairness that I would charge for 76 days of my stay abroad, even though I would have been justified in charging for the entire period. And that sum total of 76 days, if I may remind Your Honor again, is the total of the period of 66 days I believe from August 15 to October 16, when the deposition ended in Hamburg, plus 10 days' travel time going to and from the deposition.

Any attorney leaving his office and the sphere of his activities is under a disadvantage so far as the other part of his practice is concerned. And during this time I had to devote myself entirely to perpetuating the testimony of the petitioner and obviously could not look after the interests of my other clients and of the firm's clients, and necessarily had to rely on my associates and others.

A major fact that Your Honor will want to take into consideration in this connection is the value of the property at stake. I have set forth in
19 my papers the value of the property whose return we ask, and for which Mrs. Stinnes has now filed claim. And at various times, depending upon the state of the stock market and so on, the value of that property is from fifteen to twenty million dollars. That is the property with respect to which the petitioner ultimately hopes to bring a lawsuit and to name us as parties defendant, and that is why we went abroad, in order to make sure that my clients had full scope and opportunity at cross-examination, particularly since the value of the property involved was not inconsiderable.

I have also gone into somewhat my professional experience at the bar in the course of the past 30 years, which Your Honor may wish to consider, and I have asked a witness to appear this morning, a member of this Bar and of the New York Bar, who has known of my professional activities for the past 25 years and who will testify on my behalf in acquainting Your Honor with his opinion of my standing at the Bar.

My fee that I have charged has been estimated purely on a time basis I have not taken into consideration some of the various factors which I believe under any canon of ethics, whether in the District or in New York or the American Bar Association, may properly be taken into consideration in fixing an attorney's fee But in accordance with Judge
20 Morris' order, and under the circumstances of this matter, we have asked for compensation of $50 per hour for that period of 76 days during which I have been away And that amounts to $30,400, I believe.

So that we are before you this morning, if Your Honor please, to ask for the allowance of a reasonable attorney's fee, which under the circumstances we believe should be not less than $30,000, and for our disbursements of approximately $3,500, and our special disbursements, through the association of Mr Butler with us, of $1700 .

Now, when we returned to this country the petitioner brought on an application to this Court, a two-fold application, to terminate the taking of the petitioner's deposition, which finally had to be halted in Hamburg because of her poor physical condition By doctor's orders it was halted. And the second part of the application was to determine the amount of a reasonable attorney's fee for me, and also my expenses in the matter

That came before Judge Youngdahl, who I believe, with the greatest respect to Judge Youngdahl, did not wholly comprehend the nature, I believe, of a Rule 27 proceeding In any event he suggested that he would defer the fixing of the fee until after the trial of the case I have never understood what he meant by the trial of the case, because there is no litigation pending

21 The only thing pending is this proceeding There may never be a case brought and there may never be a trial And furthermore the Judge stated in his memorandum that accompanied the order that he was under the impression that the Attorney General would also have to contribute possibly to the expenses of the taking of the deposition

As I say, with the greatest respect to Judge Youngdahl, I think that the Judge left out of consideration that this whole proceeding before Your Honor is not of anybody's making but of the petitioner; and she is a non-resident and comes in here and says "I want to have my testimony

perpetuated " And obviously she has to cite the people against whom she may ultimately bring a lawsuit, and they have to be present by counsel and cross-examine That is what we have done, and all expenses have to be paid by the petitioner Judge Morris so ordered

When the order of Judge Youngdahl was handed down, the Attorney General objected, because he was opposed to possibly making a contribution to the expenses here; and he brought on an application for a modification and resettlement, and that was granted, and Judge Youngdahl struck out from his order that part that related to the possible contribution to be made by the Department of Justice, you see, but let the rest of the order stand and merely expanded it somewhat and said "Well, in so far as the attorney's fees are concerned, that can be brought on by anyone bringing
22 an application for a hearing, either before or after trial And that is the state of the matter before Your Honor today on my application now that these questions be determined

I might merely make this one more point, if Your Honor please, that in Judge Youngdahl's first order he said "We will defer the fixing of Mr. Albrecht's fee, but I will order the petitioner's attorneys to pay Mr Albrecht now $3,000 on account, without prejudice to the ultimate fixing of the fee " And my friends haven't even seen fit to pass that along to us, on some assumption, apparently, that it wasn't necessary for them to do so, although as Your Honor I think will agree, upon reading Judge Youngdahl's order of February 23, there is a specific direction that that money be paid now and not come out of any moneys previously paid

If your Honor please, Mr H Struve Hensel of the District Bar and of the New York Bar is here this morning, and my associate, Mr John Tausig, will be glad to put the witness on the stand, in order to give Your Honor some testimony as to my professional standing

THE COURT Before we proceed with that, I will hear counsel for the petitioner

MR. LESSER. If Your Honor please, the order of Judge Morris, which was a consent order was agreed to between counsel the morning of July 11 which was the morning that Judge Morris signed that order And

23 in that order we agreed to pay Mr Albrecht's reasonable fees and expenses, and we are not backing down for one moment on that agreement. However, on July 11, when we entered into the agreement with Mr. Albrecht and submitted the consent order to Judge Morris, Mr Albrecht already had reservations to go to Europe, to go to Dusseldorf, to examine Mrs. Stinnes, not in this proceeding, if Your Honor please, but in a proceeding which had been instituted by the Attorney General of the United States under his own powers, as an administrative matter, by means of a letter dated June 29, 1955, and which he addressed to both petitioner's attorneys, my firm, and to Mr Albrecht as attorney for opposing claimants to the same property. Now, if Your Honor please - that letter, which is set out in the record, makes it clear that the Attorney General, acting pursuant to his own powers and separate and apart from anything which might have happened in this proceeding, was setting the taking of Mrs. Stinnes' examination for August 1, 1955, in Germany And, according to Mr. Albrecht's own affidavits, promptly upon the receipt of this letter, which he certainly received by June 30th, he went about securing reservations to go to Germany to be present on August 1 to examine Mrs. Stinnes pursuant to this letter

Now while the letter is set out in the affidavits, I think it might be more convenient if Your Honor had a photostatic copy of it (The copy

24 was handed up.)

After the receipt of that letter of June 29 there were further efforts on the part of counsel for Mrs Stinnes and Mr Albrecht to come to some agreement with respect to this proceeding But we didn't come to any agreement until June 11, the morning the order was signed And, as I said, by that time this August 1 proceeding had been set and Mr Albrecht was on his way to go over there

THE COURT Had the previous date been fixed?

MR LESSER The date is fixed in that letter, if Your Honor please, as August 1st

THE COURT Was there a previous date?

MR LESSER No This was the first formal action by the Attorney General under his own powers

THE COURT: Was there any informal date fixed?

MR. LESSER. Not that I recall, Your Honor.

Mr. Albrecht in his affidavit points out that it was he who suggested the possibility of the Attorney General proceeding outside of this proceeding and extrajudicially to take Mrs. Stinnes' examination.

On July 11th we pointed out to both Mr. Albrecht and the Attorney General's attorney, Mr. Wieferich, that August 1 was a difficult date. And so they agreed that Judge Morris' order in this proceeding would set August 15. Well, there we have the Attorney General's proceeding extra-
25 judicially, calling for Mrs. Stinnes' examination on August 1 and Judge Morris' consent order in this proceeding setting August 15.

So that on July 19 the Attorney General wrote us and Mr. Albrecht again, saying that in order that the two proceedings might be conducted at one and the same time, the proceeding instituted by his letter of June 29 would commence on August 15, the same time as the date fixed in Judge Morris' order.

Now while this July 19 letter is also set out in the affidavit, it might be more convenient if Your Honor had a photostatic copy of it. (The copy was handed up.) So that when Mr. Albrecht left on July 16, it was pursuant to arrangements he had made to go to the Attorney General's examination.

It is true Mr. Albrecht left after Judge Morris' order was signed. But if you will examine Judge Morris' order you will find that it specifically provides that it is to be null and void and of no effect unless on or before August 2, 1955 the petitioner paid Mr. Albrecht $1,000 on account of his fees and expenses and posted $4,000 as security with the Court for Mr. Albrecht's fees and expenses. When Mr. Albrecht left on July 16, four days after Judge Morris' order, neither of those conditions had been met and, so far as Mr. Albrecht knew or could know, they might never have
26 been met. Now, they were met, if Your Honor please. On August 2 we paid the $1,000. On July 29th we had posted the $4,000 in collateral.

But I say to Your Honor that this is a case where the attorney went to Europe, where he went to Dusseldorf, where he examined Mrs. Stinnes in two proceedings, and for the purposes of two proceedings. And we take

the position, if Your Honor please, that we should only bear half the fees and expenses; and that whoever was to bear Mr. Albrecht's fees and expenses if the order of July 11th had never come to be effective, because of our failure to pay the quid that Mr Albrecht demanded, that whoever would have borne his expenses for attending the examination of Mrs. Stinnes pursuant to the Attorney General's letter of June 29, that for at least half of his fees and expenses he should look to that person

Now with respect to the $250 a week Mr Albrecht told you --

THE COURT What was that, now?

MR. LESSER With respect to the payments provided in Judge Morris' order

THE COURT. Two hundred and fifty a week?

MR. LESSER Two hundred and fifty a week, while he was there -- those were not for living expenses Those were advances against the fees and expenses which this Court might allow -- which is quite a different thing

27 Now on July 17, I believe it was, Your Honor, we learned that Mrs Stinnes was ill, and that she could not be ready by August 15, and that the matter would have to be put over until August 30th We immediately communicated with Mr Albrecht's partner, Mr McMahon, and Mr McMahon had to wire Mr Albrecht because Mr Albrecht was already on the high seas

Mr Albrecht's condition was that we stipulate that the weekly advances that he was to get against his fees and expenses nevertheless commence on August 15 Well, if Your Honor please, we had no choice It was not an absolute payment It was only on account And so we agreed And a stipulation to that effect was duly signed and entered

That left the hearing in this proceeding set over to August 30th, and the hearing in the Attorney General's proceeding still on August 15 To clear that matter up we wrote to the Attorney General on July 20th and called his attention to that fact On July 27th the Attorney General replied to us saying that he was setting his hearing over to August 30th so that both would coincide So that when finally Mr Albrecht and Mr Mann and Mr Wieferich met with Mrs Stinnes on that August 30th in Dusseldorf, to

question her, they were there to attend two proceedings -- one, this
28 proceeding, if Your Honor please; and two, the previously set proceeding initiated by the Attorney General under his own powers

In both proceedings Mr Wieferich represented the Attorney General. In both proceedings Mr Mann represented Mrs Stinnes And in both proceedings Mr Albrecht represented Mrs. de Wagenknecht and the Dutch corporation bearing the same name But still there were two separate and distinct proceedings, springing from different jurisdictions

THE COURT He had to be there, nevertheless, didn't he?

MR LESSER He had to be there, nevertheless, for the first proceeding

THE COURT Didn't he have to be there? He couldn't come home and go back the next morning, could he?

MR. LESSER. No, he had to be in Dusseldorf and he had to be there for two proceedings And they were both held at the same time. In other words, when the American consul called Mrs Stinnes as a witness, she was simultaneously a witness in two proceedings, one in the taking of her deposition in this proceeding, and secondly upon her examination by the Attorney General pursuant to his own powers under the Trading With the Enemy Act

THE COURT Were there two depositions taken?

MR LESSER There was only one transcript for both purposes

29 I say to Your Honor that Mr Albrecht was on his way over there for the Attorney General's proceeding without regard to whether this proceeding ever came into being or not I say that whoever he was to look to -- whoever he was to look to -- for his compensation and expenses with respect to the Attorney General's proceeding should bear part of the expenses with which he is trying to charge us

With respect to Mr Butler, we had originally served the petition in the proceeding to take Mrs Stinnes' deposition on Mr Albrecht, in the belief, in view of his representation of Mrs de Wagenknecht and the Dutch corporation in this related litigation, or in the assumption he either had or could obtain and would obtain the consent of his clients to accept

service in this matter. However, he appeared before Judge Curran and told Judge Curran that he did not have such authority. Whereupon Judge Curran pointed out that under Rule 27 he would order service abroad, but that under the rule if he ordered service abroad he would be required to appoint counsel for the adverse parties to be served.

Judge Curran, as the record will show, at that point turned to Mr. Albrecht and said "And you wouldn't have me appoint somebody else for the clients you represent?"

30 Mr. Albrecht said "No." And Judge Curran directed that Mr. Albrecht appear in this proceeding as their attorneys, subject to local rule 4 (b). That was necessary because Mr. Albrecht is not a member of the Bar of this Court, and the rule requires that where a person not a member of the Bar is to appear, he must have associated with him an attorney who is a member of the Bar and has a local office. We say we should not be charged with the expenses of Mr. Albrecht's qualifying under the rule to appear in this Court.

Now with respect to those 15 days that Mr. Albrecht waited. If he hadn't made reservations, if he hadn't gone over a month even before the date set in Judge Morris' order, he would not have been caught on the high seas two or three days thereafter when it developed that the deposition had to be postponed because of Mrs. Stinnes' illness. If he had been going simply for this proceeding, he would not yet have been gone.

But I think in addition to going over even for the proceeding that was instituted by the Attorney General under the letter of June 29th, Mr. Albrecht had other purposes in going over. I suggest to Your Honor that it was the summertime, and I suggest to Your Honor that he didn't go as one goes on a business trip by plane. He went on the Liberte', which takes six days, every day at our expense at $50 an hour; and I believe -- and Mr. Albrecht will correct me if I am wrong -- that he was accompanied by Mrs. Albrecht.

31 Now we say to Your Honor that $50 an hour is a fantastic rate. I know that Your Honor is familiar with the practice of this Court in guardian-ad-litem cases and in other cases. On the other hand I should like to submit to Your Honor a copy of a letter from Chief Judge Laws'

files, so identified by his secretary, Mrs. Strickler, dated February 10, 1950, addressed to William J. Hughes of the Bar of this Court, fixing his fees as special master or determining the rate at which his fees would be paid.

THE COURT. You can put that in evidence, if it is receivable -- although I don't see how it could be received.

MR. LESSER. Well, if Your Honor please, as I read the cases Your Honor is the ultimate judge of the reasonableness of lawyers' fees, and it being understood that judges know as much if not more than lawyers about these things. On the other hand, I don't consider this as evidence. I consider Your Honor knows this. This may be one of the things that is in the background of your experience.

THE COURT. I don't know about that letter.

MR. LESSER. Mr. Albrecht, have you any objection if the Judge reads that letter (handing letter)?

32 MR. ALBRECHT. I have no objection to Your Honor's reading anything; but I don't think this is pertinent.

THE COURT. If that is to be evidence, we will receive it in the usual way, when you make your case.

MR. LESSER. We say to Your Honor, in any event, that the rate more usually applied in this Court in fixing attorneys' fees is not $50 an hour, but $20 or $25 an hour. And we say also to Your Honor that the practice in New York, so far as we have been able to ascertain it, in cases of this kind -- and we refer to one case in one of the affidavits -- is not very much different from the rule in this Court, and perhaps even a little less liberal.

Now, we disagree with Mr. Albrecht on his computation of time. We take the position, if Your Honor please, that the taking of Mrs. Stinnes' deposition and conferences of counsel lasted from August 30 through October 17, and there were 38 working days during that period on which they worked or on which they didn't work because of Mrs. Stinnes' health. We say that you take those 38 days and you add to them 10 days for travel time, which we think is rather liberal, since one can get to and from

Dusseldorf in a day or two. We say travel time by custom is charged at only half the professional rate. And so we would say that travel time plus working time gives us a total of 43 days for which compensation should be paid to Mr. Albrecht.

33 Now, picking as our standard -- and perhaps I shouldn't mention it until it is in evidence -- the standard which Chief Judge Laws applied in the Interhandel case for similar circumstances at $200 a day, plus actual transportation expenses, the fees and expenses which would be due to Mr. Albrecht in toto are some $9,737.23.

And we say, if Your Honor please, that because Mr Albrecht was going over there for another proceeding, for his fees and expenses in which we are not responsible, under Judge Morris' order or otherwise, that Mrs Stinnes is only obligated for half that amount. Half that amount is $4,868 62 We have already paid him $3,500, leaving a balance of $1,368 62

Will Your Honor excuse me a moment?

THE COURT Yes, certainly

MR. LESSER I have nothing further, Your Honor, until after we have had some evidence Thank you

MR. ALBRECHT. If Your Honor please, I just want to point out that my friend didn't touch upon the reasonableness of our disbursements in any sense of the word He didn't touch upon the reasonableness of Mr Butler's bill that was rendered And these were all expenses that were necessarily incurred while I necessarily had to be out of the country and could not look after my legal business in New York

34 Now my friend for the first time before Your Honor this morning talks about the two proceedings that have been pending and with respect to which we went abroad to examine Mrs Stinnes I have never heard of that argument before There were not two proceedings pending, and Your Honor rightfully asked the question whether two transcripts were taken or two records made The only record that was made, if Your Honor please, was in the proceeding under Rule 27 that we are discussing this morning And I believe I have made it plain in my argument that so far as

I was concerned. I was not interested any longer in the Stinnes testimony, because I had covered the Stinnes angle. That didn't make the Attorney General feel too happy because he wanted to take the testimony. And I said to the Attorney General "Mrs. Stinnes has filed a claim. You certainly have it in your power to compel her to testify. We haven't and no one else has. But you can compel her to come in and testify, under the pain of dismissal of her claim; and why don't you do it?" And I assume that might have been one of the reasons, at least, why the Attorney General's letter was written.

MR. LESSER. May I have just a word, Your Honor?

THE COURT. Yes.

MR. LESSER. I haven't gone into Mr. Albrecht's expenses, because I haven't seen his vouchers. There are many things I would like to ask about his expenses. True he and my partner stayed at the same hotel in Dusseldorf. There was a wide discrepancy, I think, between their bills.

With respect to the two proceedings, if Your Honor please, if Mr. Albrecht never heard of it before, of course it is only because he hasn't read the papers. And so far as his not being interested in going to Dusseldorf to take Mrs. Stinnes' testimony, pursuant to the Attorney General's letter of June 29, I would like to read to you just three lines from Mr. Albrecht's affidavit of December 16, 1955:

> 'After the Attorney General in his letter of June 29 had demanded of petitioner that she submit herself for examination in Dusseldorf on August 1, I made prompt efforts to obtain sailing reservations in the event that petitioner agreed to comply with the Attorney General's demand."

He was not going over for this proceeding, Your Honor, but for the proceeding instituted by the Attorney General, and he said so and he submitted that to this Court.

THE COURT. You may call your witness.

And I will say to counsel that if desired the Court will call Mr. Albrecht, and you may cross-examine him.

MR. LESSER. Thank you, sir.

THE COURT In regard to his affidavit.

MR. LESSER. Yes, sir.

Thereupon

36 H. STRUVE HENSEL,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TAUSIG:

Q Mr. Hensel, will you please state your full name. A. H. Struve Hensel.

Q Are you a member of the Bar of the District of Columbia and of the State of New York? A I am.

Q Mr. Hensel, will you briefly tell the Court of your experience at the Bar. A I graduated from Columbia Law School in 1925. I started as law clerk in the office of Cravath, de Gersdorf and Henderson, as it was at that time, and remained there until 1933, when I transferred to the firm of Millbank, Tweed and Hoke, also in New York City, and became a member of that Millbank, Tweed and Hoke firm on January 1, 1934, where I remained until December, 1940, when the then Under-secretary Forrestal asked me to come down to the Navy Department for what I thought was 60 days.

Five years later I returned to the practice of law in New York, where I became the senior partner of Carter, Ledgerd and Milburn.

During my time with the Navy Department I had organized and set up the Office of General Counsel, had become the first General Counsel

37 of the Navy Department, and then later Assistant Secretary of the Navy in charge of procurement matters, the same job Forrestal performed as undersecretary when he moved up into the position of Secretary of the Navy after Frank Knox' death.

In March of 1953 I came back to Washington for what I thought was three months, to advise Secretary Wilson about the organization of a general counsel's office in the Defense Department and also throughout the three military services. As a result I resigned from my firm in

New York and became General Counsel of the Department of Defense and then later Assistant Secretary of Defense in charge of the international affairs of the three military services in the Department of Defense.

I resigned from the government service on June 30, 1955. I have established my own office in Washington, in a joint enterprise with Simpson, Thatcher and Bartlett of New York City.

I can give you the addresses of those firms, Your Honor; but I assume you have heard of them before.

THE COURT. Yes, I have.

THE WITNESS. Is that enough?

BY MR. TAUSIG:

Q. Yes. Mr. Hensel, do you know Mr. Ralph Albrecht?

A. I have known Mr. Albrecht since, I believe, 1930. Say a year one
38 way or the other.

Q. Have you known him professionally, sir? A. I have known him both professionally and socially.

Q. Are you able to state his reputation at the Bar in the State of New York? A. His reputation for industry, intelligence, competence, as a lawyer in the Bar of the State of New York is tops.

Q. Mr. Hensel, do you have any personal knowledge of the professional services rendered over these past 25 years by Mr. Albrecht? A. Perhaps let me tell you of our professional contacts. The first professional contact I remember with Mr. Albrecht was when I was a law clerk in the office of Cravath, Henderson and de Gersdorf, working for John J. McCloy, and I was in and out of the fringes of the Black Tom Case settlement.

Q. Will you tell us what that Black Tom Case is, sir? A. Well, you remember there was an explosion on an island in New York harbor during World War I, as a result of which a considerable amount of property was destroyed; and claims were made against the German Government that they had engineered that explosion, although at that time there was a state of peace between the United States and Germany. The Cravath office represented Bethlehem Steel.

39 And let me say right away that my work in that case was very, very much on the fringe I was somewhat fresh out of law school, and Mr Albrecht was my senior both at the Bar and somewhat in age So that he was occupying a leading position, whereas I was more or less the brief-case carrier for Jack McCloy Nevertheless I knew of the respect in which they held him and formed the same respect myself in our brief dealings in that connection

The next time I remember is in the wave of bankruptcies, particularly in the chain-store field, which happened shortly after the depression of 1930 and which centered in New York City At that time the Federal Bar in New York was appointing the Irving Trust Company as trustee in bankruptcy or receiver in equity in most of those cases, and the Irving Trust Company was rotating the position of counsel among the larger firms in that respect, because it took a large firm to be able to handle the vast multitude of work involved

I was involved in the Liggett Drug Store bankruptcy, and also came into the United Cigar Store bankruptcy, and into the F and W Grant and Isaac Silver, and a slight connection with McCrory and McClellan, largely in plans of reorganization in those latter

Mr Albrecht at that time was extremely active in behalf of landlords You will remember the state of the laws at that time If a lease was dis-

40 affirmed in bankruptcy, the landlord received nothing, except the rent due down to the date of the bankruptcy Not only were efforts made to challenge that rule of law in the courts, which were unsuccessful, but also to have the statute amended, which was successful, and now landlords have claims

The next time I remember dealing with him --

Q Pardon me, Mr Hensel A Yes

Q In what connection was Mr Albrecht interested and engaged in the work on those cases? A In that connection he was very interested in opposition to my general position He was representing landlords and associations of landlords

Q And as a result of his efforts, did I understand you to say that the law was changed? A Yes; he participated in the change of that law

The next time we met in any kind of a business capacity was, when I came to the Navy Department in 1940 and 1941. Early in 1941 I discovered that Mr Albrecht was already in the Office of Naval Intelligence.

In our efforts to set up a legal office on a civilian basis in the Navy Department, we were casting around for all of the lawyers we could find. If you remember, in January of 1941 war wasn't exactly popular. We
41 weren't getting the same number that we got in the following year. So we were struggling to get lawyers, and Forrestal said "Why not look around the Department and see the people who are already here doing some other kind of work and see if you can't take them."

That turned up Mr Albrecht's name; and I wanted him, and debated with Forrestal for a long time whether we should move him out of that position, and finally concluded not to, largely because of his knowledge of German and German affairs, of which personnel we were then somewhat short. During the rest of our Navy careers I cannot remember any contacts that were not purely social -- and not so many of those.

The next long period of association was in 1951 and 1952, when we both represented large German steel and coal concerns in connection with the de-concentration of the German coal and steel industries, which was carried on by the Allied High Commission after the war. It was part antitrust, it was part political, and I think it was part somewhat in the idea of retribution.

I represented a limited partnership known as Frederick Flick KG. Mr Albrecht represented a steel concern known as Hoesch. As I remember, that steel concern would be in one of the top six in Germany, six or seven -- about a million and a half, a million and six or seven
42 hundred thousand tons of steel per annum. Flick was not so large in steel, but he had a number of coal properties.

These proceedings lasted in my case over two years, during which time I spent over half of my time in Germany; so I know something about what it means to be away from your office. During that period I would say that Mr. Albrecht and I, being on the same side, that is, endeavoring to get the best possible settlement for our clients through negotiation, compared notes at least once a month and generally more often, generally in Germany, although sometimes in New York. And I know in general of the success in that work.

Q. Now, Mr. Hensel, to your knowledge do you know where Mr. Albrecht practices at the present time? A. In New York City, yes.

Q. And do you know what capacity he holds with the firm? A. I understand he is the senior partner of that firm at this moment. I think Amos Peaslee has come with the Government.

Q. Now, Mr. Hensel, did I understand you to say that you were a partner in the law firm of Millbank, Tweed and Hope, as it was known in those days? A. Yes.

43 Q. Now, Mr. Hensel, bearing in mind or assuming for the moment that Mr. Albrecht was required by the proceedings now before this Court to spend 97 days abroad in connection with the taking of a deposition which commenced on August 30th and was terminated on October 16th, 1955, and which involved a claim to property somewhere between 15 to 20 million dollars, and that the deposition commenced on August 30th, or that while the deposition commenced on August 30th and terminated on October 16th, there was actual testimony taken during that period on 19 days; and the further assumption that there were conferences between attorneys for the purposes of documenting the deposition record on an additional 10 days; and that on other days it was necessary for Mr. Albrecht to make preparations for further cross-examination -- on those assumptions, sir, what is your opinion as to the reasonableness or unreasonableness of the fee which he claims before this Court of $30,400?

MR. LESSER. Don't answer the question, please.

I object, Your Honor, to the question and I object to its substance and I object to its form

I object to its substance on the ground that it assumes and states a fact not in evidence and contrary to the record. And I have not heard --

THE COURT. Specify in that regard. In what way are the facts included not shown in the record?

44 MR. LESSER. Well, if Your Honor please, I don't think there is anything in the record about the additional days on which he had to prepare. I don't think that Mr. Tausig's statement of the number of days either coincides with Mr. Albrecht's analysis of them or with our analysis of them. I may be wrong.

THE COURT. Well, gentlemen, we have arrived at the time for our morning recess. We will recess for about 10 minutes. In the meantime counsel will look at the record and see whether or not the fact is there.

(Following brief recess.)

MR. TAUSIG. Your Honor, with regard to my question, we have both examined the record; and, without going to the merits of the objection to my question, other than the question of the accuracy of the assumptions, I believe I have been authorized by Mr. Mann to state that the following are the accurate assumptions

One, that Mr. Albrecht was away from his office for 97 days, so the record shows;

That the record also shows that the claim involves property of a value of from 15 to 20 million dollars;

And that the taking of the deposition commenced on August 30th, 1955 and terminated October 16th, 1955, with testimony actually being taken on 25 days rather than 19 days, as I previously stated. The reason for my error was that the record shows that 19 days' testimony was taken

45 in Dusseldorf and six more days in another city in Germany, making a total of 25 days

And that the conferences of attorneys for the purposes of documenting the deposition record, although they took place on 10 days, as I stated, did

not take place on 10 additional days, that is, other than the taking of the actual testimony. Seven of those days on which conferences were held were on days upon which testimony was taken. Three additional days on which testimony was not taken were involved in conferences.

And that the record shows that Mr. Albrecht was continuously engaged in preparation for cross-examination on days on which the testimony was not taken.

That is with regard to the factual statements in the record, Your Honor.

MR. LESSER. If Your Honor please, we accept all of that as in the record, except the last statement. While Mr. Albrecht in the close of his affidavit refers to the fact that he worked very hard in preparing for his examination of Mrs. Stinnes, there is nothing that indicates the number of days, the number of hours or when or where he did that.

Now so far as the period between August 30th and October 17th is concerned, we think that the record is pretty clear. But so far as any assumptions based on anything that occurred before that, I am still sorry

46 but we can't agree with Mr. Tausig.

MR. TAUSIG. Your Honor, I would just like to quote what the record says on that one subject, and I am quoting from page 13 of Mr. Albrecht's affidavit.

> "Throughout her deposition" -- that is, Mrs. Stinnes' deposition -- "my time was fully occupied by problems relating to the same, which included attendance at the hearings, attendance at counsel's meetings in the absence of the witness, preparation for the cross-examination of the witness, conferring with persons competent to supply information respecting the subject matter of the deposition, at various places in Germany, and examinations of voluminous documentation bearing on the issues."

MR. LESSER. Well, I agree with that, beginning August 30th; but his statement went further than that.

THE COURT Mr Tausig perhaps it would be well to restate your question and use the language which you find in the record.

MR TAUSIG. Yes, sir

BY MR. TAUSIG

Q Mr. Hensel, assuming that a man of Mr Albrecht's standing at the Bar was required by the proceedings now before this Court to spend 97 days away from his office in New York; that the purpose for which he
47 went abroad was to cross-examine the witness whose deposition was taken; that the taking of the deposition commenced on August 30th, 1955 and terminated on October 16th, 1955; assuming that the claim made by the deponent involved property valued from 15 to 20 million dollars; and assuming that during the period from August 30th, 1955 to October 16th, 1955 testimony was actually taken in Germany on 25 days of that period; and assuming that during the period of the taking of the deposition on seven of the days upon which actual testimony was taken there were also conferences between counsel in the absence of the witness for the purpose of documenting and completing the deposition record, and that such conferences also took place on three additional days; and assuming that an attorney of Mr Albrecht's standing was also required during that period of time to spend days upon which testimony was not taken in the preparation for future cross-examination; and assuming that the attorney involved is a senior partner in a law firm in New York City, what would you say, sir, as to the reasonableness or unreasonableness of a claim for a fee in this matter of $30,400?

A I would say that such a fee would be on the low side, in my opinion I would like to add that I am basing that comment solely on the amount of services rendered, without any consideration of the value of the property that was involved, 10 to 12 million or more, except to note
48 that it is not a charity case

Q To your knowledge, sir, do you know what the normal charge for a senior partner of a New York law firm is at this time, on an hourly basis? A Well, let me perhaps tell you what I know, to avoid

characterizing it necessarily as being normal When I was with Millbank, Tweed and Hope -- and that was before the war -- I was on the Management Committee and we made quite a study of the hourly charges, assuming it was a purely routine job. That is the only way anybody in New York builds up an hourly charge, generally, assuming it was just routine; that you can't add anything for success or subtract anything for failure, nor can you identify any particular result. Let us say you incorporate a company, and what the success of the company is going to be you don't know.

Senior partners in the downtown firms felt, in view of the overhead operating expenses, that a fair charge on the hourly basis ran between $80 and $100

Since I got back from the service and went with Carter, Ledgert and Milburn, that is, after the war, I also made an investigation of that. And at that time I was then with a much smaller firm; so I went more into that bracket. And the charges on the hourly basis were around $85 an hour

49 Q. And that was for the time of a senior partner of a downtown New York law firm? Is that correct, sir? A. That is right Let me say, that is what was felt was a bottom fee that you ought to get if you were going to stay in business

Q. Now, Mr. Hensel, do you have knowledge of fees of attorneys as fixed by the courts in the State of New York? A. Well, I have made an investigation of that, back in 1952, I believe, and prepared a memorandum on the subject, in a number of different types of cases, that were fixed by courts.

Q. I show you this document, sir, and ask you whether you can identify it A. Yes; this is a memorandum dated November 18, 1952, with my initials on the bottom, which I remember preparing in connection with a discussion about fees for the advice and consultation with General Donovan.

MR. TAUSIG (to counsel for petitioner). Do you care to see this, sir?

MR. LESSER For what purpose?

MR. TAUSIG. I am going to offer it for identification and in evidence

MR. LESSER Well, I object to its going into evidence, Your Honor This is a memorandum with respect to fees allowed by New York courts. I think it is wholly irrelevant This is a ccurt of the

50 District of Columbia. A question as to what fees are allowed is to be determined by the customs, practices and usages of this Bar and of this Court

This is all very interesting There have been interesting statistical studies in the Bar Association Journal of what lawyers have been paid in New Mexico; but I don't think that is any more relevant than this would be.

MR TAUSIG Your Honor, with respect to the relevancy, as shown in this memorandum the courts have held that the amount of the fee where the court fixes it is to be determined by the standards of the place where the attorney practices, and not by the place where he renders his service.

THE COURT, Why do you want that? You have your witness here.

MR. TAUSIG. Yes, sir Well, if he may testify with regard to his findings, I will be glad to have him so testify

MR. LESSER. If what Mr Tausig is talking about is a memorandum of law as to what standard is to be applicable, I think we will agree that the German standard is not applicable; that it is the American standard. But when a New York lawyer comes down here, as Mr Albrecht has done, and proposes to practice in this Court, I don't think that we are bound to pay him according to New York standards, whatever they are. They are Washington standards

51 MR. TAUSIG. Your Honor, I think as the law is stated that the standards to govern in this case --

THE COURT. What is there about that document that will prove anything?

MR TAUSIG Your Honor, I will offer this for identification. I do not offer it for evidence at the present time I will continue with my examination

THE COURT. It may be marked for identification The offer in evidence has been withdrawn.

(The Hensel memorandum dated November 18, 1952, was marked for identification as Hensel Exhibit No. 1.)

BY MR. TAUSIG:

A. Mr. Hensel, from your study of the cases and the standards by which the courts in New York have fixed fees of attorneys, are you able to state to the Court at this time what those standards are, sir, and what those fees have been?

MR. LESSER I object, Your Honor. Your Honor can take judicial notice of what the law of the State of New York is We don't have to prove New York law is relevant by an expert witness.

THE COURT. Sustained.

MR. TAUSIG. I have no further questions, Your Honor.

THE COURT. You may cross-examine.

CROSS EXAMINATION

BY MR. LESSER

Q. Mr Hensel, you have mentioned several New York law firms with whom you have been associated as partner or otherwise in the course of your distinguished career I think the first one was Cravath, de Gersdorf and Henderson? A Cravath, Henderson and de Gersdorf, later Cravath, Swaine and Wood There are a lot of names.

Q. Yes A. Let us call it the Cravath firm.

Q. Yes, the Cravath firm. At the time you were associated with it, will you tell us how many partners there were in that firm, approximately? A. You are asking me to guess, which I hate to do; but my guess is somewhere around 11 or 12.

Q And how many associated lawyers? A I think at that time there were something like 50.

Q About 50? A. Yes

Q During the period you were with Millbank, Tweed and Hope, how many partners did that firm have? A. Roughly 20; and associates ran close to 80.

53 Q. And Carter, Ledgert and Milburn, how many partners were there there? A. We had about 14, and only about 15 associates.

Q. And now you are associated in one way or another with Simpson, Thatcher and Bartlett? Is that right? A. Yes.

Q How many partners has that firm got? A. I can't tell you. I am not a member of that firm.

Q. But would you say it has -- A. Oh, I don't want to quibble. It is roughly in that same neighborhood. I would say that it probably runs somewhere between 15 and 20 partners, and associates around 60 to 65.

Q. Would you be good enough to tell us, if you know, how many partners there are in Mr. Albrecht's firm? A. No, I do not know.

Q. Well, would it surprise you if I told you that he has two partners? A. It wouldn't surprise me, nor would I think it relevant.

Q. Don't you think there is a difference between a senior partner with a three-lawyer firm, or a 30-lawyer firm? A. I don't know what kind of a difference you mean. I mean, he is still the same type of lawyer and the same intelligence. I am running my own firm here. I don't think there is any difference between me now than when I was

54 head of Carter, Ledgert and Milburn.

Q. I don't either, sir. I am just raising the point because in Mr. Tausig's question it was pinned to a senior partner of a New York firm. A. Well, I interpreted it, very frankly, to mean Mr. Albrecht as the senior partner of the firm that he is the senior partner of, having in mind the type of work he did. I am not talking about administrative work that sometimes falls to the senior partner, which generally is not performed by the senior partner.

So, to answer your question, I think there is no difference between the senior partner of a large firm and the senior partner of a smaller firm, so far as fees are concerned.

Q. Do you think that the senior partner of one firm and the senior partner of another firm are to be compensated at the same rate merely because they are senior partners? A. No; I didn't interpret that to mean just the standing in the firm. I interpreted that to mean the standing at the Bar, the ability of the man.

Q. Does the mere fact that a man is a senior partner in a law firm, does that give him a certain standing at the Bar, regardless of his own qualifications? A. No, I don't think it does, and I didn't interpret it that in my answer to his question. When he said a senior

55 partner in a firm, I thought he meant of the character and ability I know Mr. Albrecht to be, and my answer was based on that.

Q. In other words, your answer had no relationship to his being the senior partner of the firm? A. I attach no significance of the character that you seem to attach to it, no.

Q. I just want to make sure the record is clear. A. I took it to mean the type of ability of a man who would be entitled to rank at the top of his profession.

Q. Well, when you say entitled to rank at the top of his profession, do you mean, sir, that a man who is a senior partner of a law firm ipso facto ranks at the top of his profession? A. No; but New York law firms are kind of competitive, and mistakes do not happen very often.

Q. Would you expand on that? A. I say the New York law firms are rather competitive; and it is rather seldom that a man gets to be the head of a firm, on a mistake or a fluke, where he doesn't have the ability to justify it.

Q. Do you know how Mr. Albrecht came to be the head of his firm? A. No.

Q. Thank you.

56 Now, how long have you been at the Bar of this court, sir? A. I became admitted to the Bar in 1943, I believe.

Q. Of this court? A. Yes.

Q. And when did you start commencing to practice before this Court? A. Well, in active practice -- I am excluding trips that I made when with Carter, Ledgert and Milburn -- although I did appear.

Q. Yes. A. In September of 1955, when I established my office here.

Q. Now, notwithstanding the short period of your active practice at this Bar, do you know the reputation of a lawyer named William J. Hughes, Jr.? A. No.

Q. The name means nothing to you? A. No; I am sorry.

Q. You have been at the New York Bar actively much longer than you have at the District Bar. A. That is right.

Q. Does the name C. Alexander Caper, is that name familiar to you? A. Of Beekman Bogue, yes.

57 Q. No; of Mitchell, Caper, Marsh, Angelow and Pooch. A. Yes, the name is familiar, but I do not know him.

Q. Do you know his reputation at the New York Bar? A. Yes.

Q. And what would you say it was? A. Excellent, tops.

Q. He was, in fact -- he has died -- but he was, in fact, was he not, one of the leaders of the New York Bar? A. He was at the top, yes. I am talking now of ability and all of that.

Q. Yes. A. Integrity.

Q. Now, in giving your expert opinion as to the value of Mr. Albrecht's services, sir, did you take into account the statement made by Mr. Tausig that the claim involved property estimated to be of a value, I believe he said, of upwards of between 15 and 20 million dollars? A. I think I testified that the only weight I gave that was to identify the fact that it was not a charity case; that in saying that I thought that the $30,400 was on the low side, I was thinking simply of the time consumed, of what I felt that he would have to get paid if he was going to stay in business.

Q. But you didn't give the alleged value of the property in the alleged claim any weight? A. Just that she can afford to pay a fair

58 rate, and it isn't one of these public services that every now and then lawyers have to render for indigent clients.

Q. Well, what was there in Mr. Tausig's statement, sir, that indicated to you that whoever was to be charged with these fees can afford to pay? A. I thought with this much involved, certainly --

Q. Do you know what is involved in this proceeding, sir?

A. I think it is more than $30,000.

Q. Well, sir, suppose I put a hypothetical question to you.

A. Surely. I will do my best with it.

Q. Suppose, sir, a woman in her eighties, believing she had claims to certain properties which she could not assert at the time, and fearful of death, instituted a proceeding under Rule 27 to perpetuate her own testimony with regard to her claim with respect to those properties. Suppose further, sir, that she named as adverse parties an individual and a corporation who appeared by counsel of a bar foreign to the court, and who insisted upon agreement that the petitioner in the perpetuation proceedings pay his fees and expenses for participating in the taking of the deposition to perpetuate the petitioner's testimony -- assuming all that -- I ask you, should the petitioner in

59 such a case and under such circumstances be required to pay the fees and expenses of the adverse parties' counsel at the same rate at which he would be at liberty to charge his own client?

MR. TAUSIG. Your Honor, I object to the question, because I think that question is the question that is to be determined by this Court and not by Mr. Hensel.

THE COURT. Sustained.

BY MR. LESSER:

Q. Let me ask you, Mr. Hensel, another hypothetical question, if I may:

Suppose a lawyer is required by two proceedings to be in the same place at the same time to examine the same witness, can he properly place all of the fees and expenses involved in going to that

place and conducting that examination and coming back, can he place all of those fees and expenses properly, based upon your studies, on the one who is to pay fees and expenses in one case as to the exclusion of whoever is to pay fees and expenses in the other case?

MR. TAUSIG. Your Honor, I would like to object to that question, because I don't think there is anything in the record to show that there were two proceedings. And further I would like to call Your Honor's attention to the fact that this taking of the deposition was --

THE COURT. Just state your objection.

60 MR. TAUSIG. My objection is that this taking of the deposition is clearly shown by the record to be taken for the purposes of this proceeding and that Mr. Mann attached a copy of Judge Morris' order to that effect to the deposition. For that reason I object to the question.

THE COURT. The objection is sustained, and upon the Court's idea with the further objection that you are asking a question which is ultimately a question for the Court.

MR. LESSER. I accept Your Honor's ruling.

BY MR. LESSER:

Q For the record, Mr. Hensel, when was it that you repre-sented this German company? I think you said Flick, it was?
A. Frederick Flick.

Q. In connection with certain de-concentration proceedings. About when was that? A. During 1951 and 1952.

Q. And you said that Mr. Albrecht represented, in similar proceedings, some German company named Hirsch? A. Hoesch -- H-o-e-s-c-h.

Q. Hoesch? A. Yes, sir. He can give you the full name of it. I have forgotten.

Q. And when was that? A. At the same time.

61 Q. At the same time.

MR. LESSER. No further questions, Mr. Hensel.

Mr. Tausig I have no further questions, Your Honor.

(The witness Hensel left the stand.)

MR. TAUSIG. I would like to have Mr. Albrecht take the stand, Your Honor, with regard to the expenses.

Your Honor, Mr. Hensel wants to be sure he is excused.

THE COURT. That is agreeable?

MR. LESSER. Perfectly agreeable.

THE COURT. You are excused, Mr. Hensel.

(The witness Hensel accordingly was excused.)

Thereupon

RALPH G. ALBRECHT,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TAUSIG:

A. Will you please state your full name, sir. A. Ralph G. Albrecht.

Q Mr Albrecht, are you the attorney who has filed the affidavit in this case in support of a motion to determine the amount of your expenses and fees to be paid by the petitioner? A. I assume you are alluding to the December 16 affidavit which is the principal affidavit in support of my position.

62 Q. I am, sir Is the answer to that question "Yes"? A. It is "Yes."

Q. Sir, I refer to Annex D of that affidavit, and ask you whether that correctly itemizes the expenses which you incurred while abroad for the purposes of taking this deposition involved in this proceeding. A. As I stated to the Court upon my argument, Annex D does not set forth all the expenses that I incurred in connection with the taking of petitioner's testimony. But I have brought forward a summary of the principal expenses which I have set forth in Annex D.

If I may be permitted to comment a little further, in view of the fact, if Your Honor please, because I had gotten to Europe as early as I did, and weeks before the commencement of the taking of

the testimony. I did not, as is set forth in Annex D, under the third part, where I itemize normal expenses of the trip from Paris to Dusseldorf; but this I am putting forward because I think they are a legitimate charge to be paid, since I had to get to Dusseldorf. And I arrived in Paris. But my actual route was to go to Switzerland and come back and go to Dusseldorf. So I took the through route, which amounts to $156, which has been submitted on the basis of
63 what I was told in Paris the expenses of that trip would be.

Q. Now, Mr. Albrecht, do you have vouchers to support the itemization as shown in Annex D? A. I do not have vouchers to support all the items of Annex D, because a great many of them, a great many of the expenses and disbursements, were with respect to matters on which no proof could be obtained, no documentary evidence could be obtained, for future proof.

Q. Such as? A. I am alluding, for example, to meals taken outside of the hotel, for example. That would not appear on the bill. And I might add that the major portion of my subsistence took place outside of the Breidenbacher Hof, where all counsel stayed in Dusseldorf.

Q. Do you have vouchers to support the major items or the majority of the items set forth in this annex? A. Yes, I have.

Q. Do you have those with you, sir? A. I have; and if the Court would permit me, I would like to make one or two comments in explanation of the same. Petitioner's attorney in arguing before Your Honor alluded to the fact that I went abroad by ship and took my wife with me. As the record will show, I have been heavily engaged in European practice ever since the war, because I claim
64 some sort of special knowledge of central Europe and the languages of some of the people there, so that I have been in considerable demand. And whenever I could escape some of the pressure on me, with the client's consent always, if the trip warranted it, I would take my wife with me. Obviously the itemizations of these expenses in Annex D do not include anything relating to Mrs.

Albrecht. And I just wish to call your attention, for example, to Item 1, which relates to the trip from New York to Le Havre, where I attach a bill of the travel agency which specifies that I have reserved a stateroom costing $1230. In my itemization under Annex D Your Honor will find one half of that amount, although I have been informed by my travel bureau that I would have been warranted to charge more than one half for single occupancy of such a stateroom.

The other items, if Your Honor please, on that bill are not pertinent, because there was a reservation on this bill which I am going to submit of a return passage for my wife, who returned to America before I ever got to Dusseldorf. So that at no time while I was in Dusseldorf and subsequently was my wife with me; so that no allocation of any expenses had to be made.

The third item on the bill of my travel bureau relates to an air passage from Dusseldorf via London to New York, departing September 7th. Now Your Honor has heard that the deposition con-

65 tinued until October 16. I had anticipated, however, that counsel would agree to a short continuance of the examination if it took that long; to enable me to return to New York. Actually that agreement proved impossible to obtain and I did not use that passage. But at the end of my Annex D, on the other hand, is the itemization of what the return air passage actually cost me, when I left Hamburg to proceed to New York via London on October 19, 1955.

I would also like to say, if Your Honor please, that under the fourth heading of my Annex D I have made an estimate of expenses at $35 a day, covering the period from August 15 to August 28. Your Honor will remember that Judge Morris had directed that the deposition commence on August 15; that it subsequently had to be postponed until August 30, and I actually didn't get to Dusseldorf until August 28. And therefore I put in this charge of $490, covering that period on the basis of what I conceived to be a reasonable estimate of expenses for that period.

I might also say, if Your Honor please, that in the answering affidavit of petitioner's attorney -- the answering affidavit to my affidavit of December 16 -- objection was made to this annex on the ground that no copies of the various cable messages that I listed in here were included with that annex. Obviously the messages that
66 passed between me and my office and clients would necessarily be privileged. I have, of course, no compunction whatever in submitting them to Your Honor for inspection, if Your Honor feels that should be necessary. I do not think, however, that the amount involved in connection with those cables is particularly important. I just wish to recall Your Honor's mind to the fact that while we were abroad there was some activity brought on by both parties in this Court while I was away, in connection with those hearings for further security and to terminate the taking of the deposition, and a great many cables passed naturally between me and my associates over here to inform them with respect to matters relating to the papers that they had to submit to the Court. And those were largely the cable messages referred to in my statement.

They also refer to hotel reservations that of necessity had to be made in Hamburg, for example. They also refer to reservations that had to be made in London, and they also refer to apprising my office of my changes in location, so that my office as well as my family would be advised of my whereabouts while I was abroad.

I am submitting to Your Honor, if I may, the major portion of my vouchers, including hotel bills and receipts for payment of steamship tickets and copies of airplane tickets. And to some of these hotel bills that are annexed are also vouchers showing the
67 amount of the cable charges with which I had been charged.

Q. Are these the vouchers of which you speak, sir?

A. These are.

MR. TAUSIG. Your Honor, I would like to offer these for identification and in evidence.

THE COURT. They may be marked And they are offered. Do I hear objection?

MR. LESSER. We asked for them, Your Honor.

THE COURT. They may be received.

(The vouchers were marked and received in evidence as Albrecht exhibits 1 to 8, inclusive.)

BY MR. TAUSIG:

A. In addition to those vouchers, Mr. Albrecht, did you receive a statement for services and disbursements from Mr. Butler? A. I did, sir.

Q. Were those services performed in connection with these proceedings while you were abroad? A. Yes; and that is annexed as Annex E to my affidavit of December 16.

Q. And the amount of that, sir? A. And the amount of that statement is $1,698.70.

MR. TAUSIG. I have no further question.

THE COURT. You may cross-examine, Mr. Lesser.

68 CROSS EXAMINATION

BY MR. LESSER:

Q. Mr. Albrecht, isn't it a fact that promptly after the receipt of the Attorney General's letter of June 29, with respect to the taking of Mrs Stinnes' examination in Dusseldorf on August 1, you set about making sailing reservations so that you would be able to attend that examination, if Mrs Stinnes complied with the Attorney General's demand? A. The answer to that is yes, except that the statement which you have just read from my affidavit is perhaps not complete, in that the efforts --

MR. LESSER. I ask that everything after the word "yes" be stricken, as not being responsive to the question.

MR. TAUSIG. Your Honor, my client has the right to answer the question fully.

THE COURT. Yes. The objection is overruled.

You may continue.

THE WITNESS. I am sorry, Mr. Lesser. The only thing I wish to call attention to is that perhaps the word "promptly" was not very apposite, because I probably started a little earlier to make reservations.

BY MR. LESSER:

Q. You probably what? A. I probably started earlier.

Q. You started earlier? A. To make reservations.

69 Q. Than the receipt of the June 29th letter? A. That is correct, yes.

Q. When would you say you started to make reservations to go to Europe -- to make the reservation to go to Europe that finally culminated in your July 16 sailing? A. Well, Mr. Lesser, I couldn't recollect that with accuracy. But as the record shows that I am a fairly experienced traveler, and that particularly when one is traveling for business it is highly annoying not to be able to move when one wants to move and get places, I made reservations for various dates, if Your Honor please, in order to make sure that when petitioner's attorneys finally agreed to pay the expenses which we felt they would have to pay in order to take this testimony, we would be prepared to get over there with the least delay of time.

Q. So that now you say, Mr. Albrecht, contrary to what you said in your affidavit of December 17, 1955, that it was not the receipt of the Attorney General's letter that prompted you to seek reservations. Is that right? A. No. That was also a cause that caused me to seek reservations.

Q. Then your present testimony is that what you said in your December 17 affidavit was only half so. Is that right?

70 A. Well, I do object --

Q. Is that what you want the Court to believe?

A. I do object to the insinuations being made, because I was anxious to get abroad as quickly as I could, because I knew the Attorney General was very anxious to take Mrs. Stinnes' testimony;

and I agreed to oblige him and consent provided the petitioner agreed to pay our expenses.

Q. And in any event you knew, did you not, on June 29th that the Attorney General, pursuant to his own powers, had directed that Mrs. Stinnes' testimony be taken on pain of her claim being dismissed. Is that right? A Well, I don't know whether I can agree with that interpretation. I had always taken the position, in my talks with the representatives of the Department of Justice, that as soon as Mrs. Stinnes had filed her claim, certainly some power resided somewhere, not to compel her to testify; but if she didn't submit herself to being examined, that the claim might be dismissed.

Q. And you urged that position on the Attorney General's office, did you not? A. Oh no. I wasn't the slightest bit interested because, for the reason that I have stated to the Court earlier this morning, I had no interest whatsoever in the Stinnes angle since the record in the Wagenknecht case is today replete with testimony from people who have covered the Stinnes angle in that litigation.

71 Q. Now let's get this straight, Mr. Albrecht. In your affidavit of December 16, at page 6, you said:

> "On several occasions I had pointed out previously to the Department of Justice that if the Attorney General desired to obtain Mrs. Stinnes' testimony, he was possessed of the undoubted power to compel Mrs. Stinnes to submit herself to examination upon penalty of dismissal of her claim. By his letter of June 29, 1955" -- and then there is a word or two left out -- "the Attorney General finally proceeded on that theory and made a demand upon petitioner's attorneys to produce their client for examination in Dusseldorf on August 1."

And then later on in your affidavit you said, at page 18:

> "After the Attorney General in his letter of June 29 had demanded of petitioner that she submit herself for

examination in Dusseldorf on August 1, I made prompt efforts to obtain sailing reservations in the event the petitioner agreed to comply with the Attorney General's demand."

Now tell me, sir. You said that in your affidavit, didn't you? A. There is no doubt about that, Mr. Lesser.

72-100 Q. All right. Now tell me, sir, if you were so disinterested in Mrs. Stinnes' testimony, why were you so anxious to be there to attend her examination, under the Attorney General's powers, that promptly upon the receipt of his letter you set about making arrangements for reservations? A. Well, there were various reasons. We have been very fortunate, I think, in connection with the Wagenknecht litigation, that counsel have gotten along very well with one another, and there has been no effort on the part of counsel to make life difficult for the opponent. And whenever we could oblige one another, we would do so. I have several times this morning already stated the reasons why I was not in the slightest bit interested in Mrs. Stinnes' testimony. I will go further and point out once more, as the record in this proceeding shows, that Mrs. Stinnes, since 1924, had given a full power of attorney to her sons to manage all her affairs and her property and her businesses, so that the knowledge with respect to those affairs was in the sons rather than Mrs. Stinnes, who was an elderly lady, could only know matters in general --

Q Just a minute

MR LESSER I really must object.

THE COURT. Gentlemen, that will be all for now. Let us be back at one-thirty, please.

(At 12:35 p.m. the luncheon recess was taken until 1:30 this afternoon.)

101 AFTERNOON SESSION

(The cause was resumed at 1:30 o'clock, p.m., pursuant to the taking of the luncheon recess.)

THE COURT: Mr. Tausig, will you see to it that the Clerk marks your exhibits for identification?

MR. TAUSIG: I understand, Sir, that they were marked for identification.

THE COURT: I had a substitute clerk here this morning, and they weren't sufficiently identified.

MR. TAUSIG: I think, your Honor, that would be desirable.

MR. LESSER: I would suggest that we hand them to the witness and let him put them in chronological order.

THE DEPUTY CLERK: Petitioner's Exhibits Nos. 1, 2, 3 and 4.

MR. TAUSIG: Mark it applicant's. We have too many petitioners, Judge.

THE DEPUTY CLERK: Applicant's Exhibit No. 5, marked for identification, No. 6 marked for identification, applicant's No. 7 marked for identification and No. 8 marked for identification.

(Whereupon, the documents referred to were marked for identification "Applicant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 and 8.")

THE COURT: Mr. Lesser, I think you were inquiring of the witness.

MR. LESSER: Yes, sir.

102 MR. TAUSIG: Excuse me one moment. They have just been marked for identification?

THE COURT: No. 1 through 8, inclusive.

MR. LESSER: And I understand, your Honor, these will be subject to our inspection and possible objection.

THE COURT: Well, they were marked for identification.

MR. TAUSIG: Detailed vouchers with respect to expenditures, and I am not sure -- we asked in the proceeding before Judge Youngdahl --

THE WITNESS: (Interposing) May I observe something, if your Honor please. I just got back a report that during this entire examination

counsel was staying at the same hotel, so they must have a pretty good understanding of the cost of hotels in Germany and taxes.

THE COURT: The Exhibits Nos. 1 through 8, inclusive are received. You may use them on cross examination if you like.

(Whereupon, the documents referred to previously marked for identification "Applicant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 and 8" were received in evidence.)

Whereupon

RALPH G. ALBRECHT

having been previously sworn, resumed the stand, and testified further as follows:

103 CROSS EXAMINATION (resumed)

BY MR. LESSER:

Q. I take it from your last answer before the break for lunch, Mr. Albrecht, that it is your testimony that your object in going to Dusseldorf, or making arrangements to go to Dusseldorf to obtain the examination of Mrs. Stinnes, ordered by the Attorney General's letter of June 29, was in order to cooperate with the Attorney General. Is that it? A. I told the Attorney General that I would cooperate with him, provided our petition about the expenses in connection with the perpetuating of her testimony was granted.

Q. When you made your reservations to sail on July 16, the petitioner's attorneys had not yet agreed, had they? A. The attorneys had not yet come to an agreement, but I am of the view --

Q. (Interposing) We had not come to any arrangement yet? A. Not at that point.

Q. And, as a matter of fact, when you sailed on July 16, the petitioner had not paid the thousand dollars or posted the $4,000.00 bond for security with the Court, the payment of which, the posting of which, the failure to pay it or the failure to post it would have made Judge Morris' order null and void?

May I repeat the question When you sailed on July 16, Mr Albrecht, the petitioner had not paid you the thousand dollars or posted the $4,000 00 surety with the Court that Judge Morris' order of July 11 called for?

104 MR. TAUSIG: Are you asking him whether they had or had not?

MR. LESSER: Whether they had.

THE WITNESS: No, sir; these payments ordered by Judge Morris had not been paid

BY MR. LESSER:

Q. And, as a matter of fact, Judge Morris provided in that order that if the conditions provided in his order of July 11 were not met, his order of July 11 would be null and void and of no effect? A. Oh, I assumed that counsel responsible and a member of the Bar of this Court would not flaunt such an order.

Q. Now, there has been a lot of reference to a letter of June 29 of the Attorney General I note that the letter has been quoted in affidavits on both sides

I show you what purports to be a photostatic copy of a letter dated June 29, 1955, addressed to Phele, Lesser, Mann, Riemer and Luxford, Esquires, 1210 Eighteenth Street, N W., Washington 6, D C., and also to Ralph G. Albrecht; Esquire, care Peaslee, Brigham, Albrecht and McMahon, 501 Fifth Avenue, New York, New York, and purporting to be signed by Dallas S. Townsend, Assistant Attorney General, Director, Office of Alien Property, and ask you whether or not you can state this is a true copy of the genuine first duplicate original, as is said to have been received by you?

105 A Well, as I do not have my file here, I cannot tell you whether this is a true copy I assume it is a copy, but I cannot say categorically.

Q You say it was a copy sent by the Attorney General? A. I am sorry. I correct myself

Q. Would you be good enough to read that letter and tell us your best recollection whether that was received from the Attorney General?

A I am willing to say that it is, but you asked me categorically if it was a true copy. I can't testify to that.

MR. LESSER: I offer this in evidence. This is Petitioner's Exhibit --

THE COURT: Petitioner's Exhibit No. 1 for identification.

MR. LESSER: I offer it in evidence. I would like to examine it first. I haven't seen it.

THE COURT: Mr. Tausig.

MR. TAUSIG: Yes.

THE COURT: I will permit you to show it to Mr. Albrecht. He is familiar with it --

MR. LESSER: He has already testified it is a copy of a letter he received and I have no objection.

THE COURT: Petitioner's Exhibit No. 1 is received.

(Whereupon, the letter of June 29, 1955, previously described and marked for identification "Petitioner's Exhibit No. 1", was received in evidence.)

106

BY MR. LESSER:

Q I show you what purports to be a photostatic copy of a letter without date. It is addressed to Pehle, Lesser, Mann, Riemer and Luxford, Esquires, 1210 Eighteenth Street, N. W., Washington 6, D. C., and also to Ralph G. Albrecht, Esquire, care Peaslee, Brigham, Albrecht and McMahon, 501 Fifth Avenue, New York, New York, with a carbon copy to Henry F. Butler, Esquire, 1039 Investment Building, Washington, D. C., and signed by Paul V. Myron, Deputy Director, Office of Alien Property; and I ask you if you have seen the original or a duplicate original of that letter that is addressed to you? A. I would say my recollection is that we probably received that letter.

MR. LESSER: I ask that it be marked for identification, if the Court please, as Petitioner's Exhibit No. 2, and received in evidence.

THE COURT: Petitioner's Exhibit No. 2 will be received.

(Whereupon, the letter, without date, previously described and marked for identification "Petitioner's Exhibit No. 2" was received in evidence.)

MR. TAUSIG: I have no objection to it, Your Honor.

BY MR. LESSER:

Q. Mr. Albrecht, if the July 11 order had become null and void, according to its terms, what arrangements did you have, or did you have
107 arrangements, rather for the payment of your fees and expenses for being in Dusseldorf?

MR. TAUSIG: I object to that, your Honor. It is irrelevant.

MR. LESSER: If your Honor please, may I be heard?

THE COURT: This witness has testified it was null and void?

MR. LESSER: No, but it might have been at the time he left, your Honor

MR TAUSIG: The point is it is an assumption of a fact that never took place.

THE COURT: Objection sustained.

BY MR. LESSER:

Q Now, Mr. Albrecht, there has been testimony here that in the last of 1953 you were abroad taking depositions in the Stinnes case against the Attorney General Is that correct? A That is correct.

Q. Now, how many cases were pending in this or any other Court in which you were representing parties against the Attorney General.

THE COURT: What difference does that make. Let's stick to the issues here.

MR. LESSER: May I have the exhibits

MR. TAUSIG: Yes, sir.

BY MR. LESSER:

108 Q I show you applicant's Exhibit No 5 and ask you whether this states your bill from the Dusseldorf Hotel? A No, it does not.

Q. Would you be good enough to tell me and the Court what it is?

A Well, these were vouchers annexed to the bill from the Dusseldorf Hotel, Annex "D", representing laundry charges and service charges. Also cable charges.

Q I show you applicant's Exhibits Nos. 2, 3, and 4. Are these bills that you received from the hotel in Dusseldorf? A That is right.

MR. LESSER: If your Honor please, if you will pardon me, these are all in German and I can't read a word of it.

THE WITNESS: I will be glad to translate it for you, and for the Court.

BY MR LESSER

Q Now, I gather from Annex "D" to your affidavit of December 16, that you would have Mrs. Stinnes pay a total of $1,295.43 for the expense of your stay at the Breidenbacher Hof?

THE COURT: No. That is only the first page of it.

MR. LESSER: No, if your Honor please, the rest are cables.

THE COURT: Very well.

MR. LESSER: I didn't mean to include the cables.

THE COURT: Very well.

109 MR. TAUSIG: I don't think we have an answer.

THE COURT: There is no question pending right now.

MR. LESSER: If there is one, I will withdraw it right now.

THE COURT: All right.

BY MR LESSER:

Q Referring to Item 5 of Annex "D" to your affidavit of December 16, would you be good enough to tell us how much in American money you are asking Mrs. Stinnes to pay for your accommodations at the Breidenbacher Hof in Dusseldorf? A Well, I don't know whether I correctly understand your question, but according to my exhibits and as the exhibits which you have just shown me will prove, I stayed there for thirty-nine days, and the hotel room and service charges that were included on the bill amounted to a total of 2,691 marks. Now, that amount does not include such charges that I may have had there for breakfast or other meals, nor such other gratuities that the hotel personnel would normally expect from a visitor.

THE COURT: What he is asking is how much was that in American money, those two items.

THE WITNESS: Roughly one-fourth of that.

MR. TAUSIG: $450.00?

THE WITNESS: I think about $600.00.

MR. TAUSIG: $600.00 is the mathematics of it.

THE COURT: Next question.

110 BY MR. LESSER:

Q. What kind of accommodations did you have at the Breidenbacher Hof? A. I had a bed room, a parlor, and bath which I always occupied in the Breidenbacher Hof or any other hotel.

Q. I take it that these were not the minimum accommodations that the Breidenbacher Hof afforded? A. I have never asked for minimum accommodations. These accommodations I have been obtaining at the Breidenbacher Hof ever since the hotel was rebuilt after the war.

Q. Are they the best accommodations at the Breidenbacher Hof? A. I would not know.

Q. Would they be medium accommodations? A. I don't know about that either. I really don't know whether they have a great many rooms in different price ranges. Like most European hotels they do have rooms without bath, and, I think, to that extent, you can get cheaper accommodations, but I rather assume the rooms aren't without baths, but I really would not know.

Q. Do all of the rooms with baths have parlors with them? A. Why, I should think not. Certainly not, but I had no office on the other side, I had no place where I could examine documents and confer with people in private. The only chance of privacy was in some sort of accommodation, whether it is an office or a parlor.

111 Q. Do you know what a bed room and bath at the Breidenbacher Hof would have been without a parlor? A. I don't know.

Q. You said there that item which was -- I withdraw that. You told us that Item 4 was Paris-Rome. Is that right? A. Yes, that is correct.

Q Where were you actually during this two-week period, approximately two weeks, between August 15 and August 28? A. For a part of that time -- let me think now -- For a part of that time, well about the middle of August in view of the postponement of the examination I was on the Italian Riviera with my wife, but on or about the 16th I came to Zurich in Switzerland for the purpose of consulting with represenfatives of my clients and I remained there until the 21st when I departed for Munich in order to accompany my wife, at least part of the way, on her trip to Paris where she was then enroute, whereas I left Munich on August 24th and had further conferences with representatives of my clients and actually arrived in Dusseldorff in the early afternoon of August 28.

Q. Now, where did you have these conferences with representatives of your client after you had left Munich, or rather after you had left Zurich and gotten to Munich? A. I had those conferences in Copenhagen.

112 Q. So, that during this period from August 15 to August 28, was it the 28th you arrived in Dusseldorff? A. Yes.

Q. You were in Italy, Switzerland, Austria and Denmark? A. Not Austria. I will have to correct you I was only one day in Italy brought about by my enforced holiday over there, as I was over seas.

MR. LESSER: No further questions.

REDIRECT EXAMINATION

BY MR. TAUSIG:

Q. Mr. Albrecht have you testified as to the date upon which the petition was filed herin to perpetuate testimony, do you know that date, Sir, approximately? A. Yes. I believe in my argument this morning it was just about a year ago, in May, 1955, this petitioner filed the petition under Rule 27.

Q. Prior to that time had you been in touch with the attorney for Mrs. Stinnes in regard to taking her deposition? A. Yes, sir.

Q What has been your position since that time? A. We have to

go back to February 8, 1955, which is the date, I believe, Mrs. Stinnes filed her claim to substantially all of the property. Thereupon the petitioner's attorneys initiated an approach to the Attorney General and to me with a view to getting her consent to the perpetuation of Mrs. Stinnes' testimony.

113 Q Now, Sir, what was your position at that time with regard to giving your consent? A. I said that we had no interest in the Stinnes testimony, as the Stinnes angle for the purposes of the Stinnes estate had been covered and that as the Attorney General, or a representative of the Attorney General's office had previously communicated to me that the Stinnes testimony had not yet been obtained, I indicated that I would cooperate with him and not oppose the petition. The petition subsequently filed provided that the petitioner would be paid all of the expenses of perpetuating her testimony.

Q And were the petitioners willing to do that, Sir? A. In the beginning they were not willing to do it, but after they had filed their petitions in this proceeding in May they initiated contact with me again and I remember distinctly the position taken by the Attorney General at that time that while they had agreed and had great sympathy for my position and felt that I was entitled to an interest as a participating party --

MR. LESSER: (Interposing) I object to that.

THE COURT: As a matter of fact, I don't know why you are opening up that subject. There must be some reason for it, but I don't see it.

114 MR. TAUSIG: Yes, there is. I would like to ask this question, your Honor.

THE COURT: Go ahead.

BY MR. TAUSIG:

Q. Your statement is from the time this proceeding was instituted you said you would not consent thereto unless your fees and expenses were paid? A. That is absolutely so.

THE COURT: You have answered.

BY MR. TAUSIG:

Q. And the order of July 11, signed by Judge Morris, was that consented to and signed by all of the parties in this proceeding?

A. It was, Sir.

Q. Is that one of the reasons you accepted? A. Yes, sir.

MR. TAUSIG: That is all.

MR. LESSER: No, I think I have no further questions.

THE COURT: Mr. Tausig?

MR. TAUSIG: No questions.

THE COURT: Step down.

(Witness excused)

Whereupon

ROBERT J. WIEFERICH

having first been duly sworn, testified as follows:

115 DIRECT EXAMINATION

BY MR. LESSER:

Q. Please state your name? A. Robert J. Wieferich.

Q. Mr. Wieferich you are a member of the Bar? A. I am.

Q. You are an attorney on the staff of the Department of Justice?

A. Yes, sir.

Q. And you have represented the Attorney General and the Atlantic Assets Corporation in this proceeding, have you not?

A. Yes, sir

Q. And you have also had other contacts in your official capacity with other aspects of the Stinnes claim and litigation and respondents' claim? A. I have.

Q. Now, I show you what purports to be a copy of a letter addressed by Messrs. Pehle, Lesser, Mann, Riemer and Luxford, under date of July 20, 1955, to Mr. Robert J. Wieferich, Attorney for Herbert Brownell, Jr., Attorney General of the United States and Atlantic Assets Corporation, Department of Justice, Washington 25, D. C., and ask you whether you can identify that as being a true copy of the letter received by your office and now in its files?

THE COURT: Who is it signed by?

116 MR. LESSER: Signed by James F. Mann. The copy does not show who signed it.

THE COURT: It cannot be a true copy?

THE WITNESS: I have examined this letter and it appears to be a copy of a letter which I have in the files of the Department of Justice, my copy being a signed copy, and, if the Court would prefer to examine the file, I would make it available to the Court.

THE COURT: Oh, no. I do not care to do it.

MR. LESSER: I ask that this be marked for identification as Petitioner's Exhibit No. 3, if your Honor please.

THE COURT: Mark it.

(Whereupon, the copy of the letter referred to was marked for identification "Petitioner's Exhibit No. 3")

MR. LESSER: I offer Petitioner's Exhibit No. 3 marked for identification in evidence.

MR. TAUSIG: I object, your Honor, because I see no relevancy to this proceeding.

THE COURT: Let me look at it.

MR. LESSER: All right.

THE COURT: Who does that apply to in this case?

MR. LESSER: If your Honor please, this is in reply to a letter that is already in evidence, extending by agreement the time during which not only the deposition in this case was to be taken, but the examination under the Attorney General's letter of June 29th. I have

117 an answer to that from the Attorney General, which is annexed.

THE COURT: Well, let us see.

BY MR. LESSER:

Q Mr. Wieferich, I show you what purports to be a photostatic copy of a letter on the stationery of the Department of Justice dated, I believe, July 26, 1955, addressed to Pehle, Lesser, Mann, Riemer

and Luxford, and I ask you if you can identify that as being a true copy of the letter addressed by your office to the addressees thereof?

A. Yes, this is a true and correct copy. It bears my initials in the upper left hand corner.

Q. Can you say whether this letter was in reply to the letter that has been marked for identification as Petitioner's Exhibit No. 3?

A. Yes, I am certain that it is. It acknowledges receipt of that letter in the first line.

MR. LESSER: I ask that this letter be marked Petitioner's Exhibit No. 4 for identification, and I offer No. 4 and renew my offer of No. 3 in evidence.

(Whereupon, the photostatic copy of the letter referred to was marked for identification "Petitioner's Exhibit No. 4.")

MR. TAUSIG: May I examine it? Your Honor, again I will say this to your Honor: My objection to its admission into evidence is there is nothing binding in these letters with regard to the applicant. I assume it is being offered for the purpose of showing the other two proceedings. There may have been, but those letters do not establish there were two proceedings insofar as my client is concerned and that is the reason I say they are not relevant to this proceeding.

118

THE COURT: The objection to Petitioner's Exhibits 3 and 4 is sustained.

MR. LESSER: If your Honor please, I should like to offer for your Honor's consideration and renew the offer I made during the argument this morning, of a copy of a letter dated February 10, 1950, written by Chief Judge Laws to William J. Hughes, Jr., on the issue of reasonable compensation for services under circumstances very similar to this case.

THE COURT: Has that been marked for identification?

MR. LESSER: It has not, but I am going to ask it be marked for identification Petitioner's No. 5.

(Whereupon, the copy of the letter referred to was marked for identification "Petitioner's Exhibit No. 5.")

THE COURT: Mr. Tausig?

MR. TAUSIG: Again I object to the admission of this document and I do not think it is appropriate to call attention to the figures.

THE COURT: Just make your legal objection.

MR. TAUSIG: My legal objection is this letter has nothing to do with this case.

119 THE COURT: That is your legal objection?

MR. TAUSIG: That is the reason I say it is not admissible.

THE COURT: I will sustain the objection.

MR. LESSER: Exception, your Honor. If your Honor please --

THE COURT: (Interposing) If the writer of that letter is a witness you could have him here so he can be cross examined.

MR. LESSER: Well, I hoped to avoid the necessity of calling the Chief Judge

THE COURT: The objection is sustained.

BY MR. LESSER:

Q. Mr. Wieferich, in your capacity as an attorney in the Department of Justice have you seen and examined the original or duplicate original of a certain letter addressed to William J. Hughes --

MR. TAUSIG: (Interposing) Your Honor, I object to any answer to that question. The Court has already ruled it is not relevant.

THE COURT: Objection sustained.

MR. LESSER: Well, I think, if your Honor please, it has relevancy as to the testimony of the New York lawyer as to what he thinks the value of his service is.

THE COURT: Next question, please.

MR. LESSER: I have no further questions.

MR. TAUSIG: No questions, your Honor.

(Witness excused)

120 MR. LESSER: May I ask that this document be marked as the next exhibit for identification, Petitioner's Exhibit No. 6, marked for identification?

MR. TAUSIG: May I examine it, your Honor?

THE COURT: Yes.

MR. TAUSIG: I assume this is offered in evidence?

MR. LESSER: Not yet.

(Whereupon, the document referred to, consisting of a certified copy of an order entered by the United States District Court for the Southern District of New York fixing, in part, attorney's fees for the taking of depositions abroad was marked for identification "Petitioner's Exhibit No. 6.")

MR. LESSER: I offer next in evidence, if your Honor please, Petitioner's Exhibit No. 6 for identification which is a certified copy of an order entered by the United States District Court for the Southern District of New York, fixing in part attorney's fees for the taking of depositions abroad.

I assume that the same objection will be made.

MR. TAUSIG: Your Honor, I object on the ground it has no relevancy here. We have had no testimony as to the --

THE COURT: (Interposing) State your legal objection.

MR. TAUSIG: The objection here is it is not admissible or relevant to the pending case.

THE COURT: The objection is sustained.

121 MR. LESSER: Now, if your Honor please, I know it is late in the day and we have been here for an awfully long time in regard to this matter, but I would very much appreciate the privilege if I might address myself to the letter of February 10, 1950 of Judge Laws which your Honor had rule not admissible. That is Petitioner's No. 5 for identification.

As I suggested to your Honor on argument this morning there is no need for any technical facts to be placed before your Honor as to what the reasonable rate of compensation is for practicing lawyers. The cases in the Court of Appeals and the District Courts are clear that Your Honor is perfectly competent to determine that himself without evidence.

It was on that theory I offered here this morning these items appearing in the newspapers at the time. It is that sort of thing we all know and I offered it with that thought in mind and on that basis I asked your Honor to take it de bene esse --

THE COURT: The Court will adhere to its previous ruling

MR. TAUSIG: We have nothing further, your Honor.

MR. WIEFERICH: I should like to speak for about two minutes on behalf of the Attorney General and make it clear to the Court that we have no interest and I hope anything I say will not be considered in the enlargement or diminishing of fees. We think that is a matter to be determined by counsel and ordered by the Court, that is, we would have no voice in setting the fee. I wanted to explain that because that is the
.122 reason for that letter of June 29 that the Attorney General wrote. Mrs. Stinnes, who was in Germany at all times and whose deposition was not taken in 1953 and 1954, filed a claim with our office and in February, 1955, we were informed if we could not get Mrs. Stinnes' testimony we would have to go to trial without it and it turned out Mrs. Stinnes could not testify at the first hearing and I could not possibly get to Germany and it was for that reason we then sent out our letter of June 29, advising all parties that we wanted to go ahead and take the deposition and we were willing to stipulate it could be used in any proceeding under the Trading with the Enemy Act, judicial or administrative, to which the Attorney General is a party.

Now, that is the sequence of events, your Honor. What the legal effect of it is I do not care to comment on at this time.

THE COURT: Thank you very much. Does counsel wish to be heard?

MR. LESSER: Yes, your Honor, I have a memorandum which I wish to leave with your Honor.

THE COURT: Just read it.

MR. LESSER: (Reading) The Court may be its own judge as to the value of an attorney's services and the testimony of expert witnesses may be disregarded, or may be dispensed with entirely.

123 Stanolind Oil and Gas Co. v. Guertzgen, 100 F. 2d 299, 302 (C. C. A. 9, 1938);

Davitt v. O'Connor 73 F 2d 43, 48 (C. C. A. 2, 1934);

Tracy v. Spitzer-Rorick Trust and Savings Bank, 12 F. 2d 755, 756 (C. C. A. 8, 1926);

McDougal v. Black Panther Oil and Gas Co., 277 F. 701, 707 (C. C. A. 8, 1921);

In Re Associated Towel & Linen Supply Co., 7 F. Supp. 699, 700 (D. C. S. D. Cal., 1934)

Thus in Davitt v. O'Connor, supra, it was said per curiam (73 F. 2d at 48):

* * * The testimony of the defendant's witnesses and the finding of the master as to the value of the services we disregard because it seems to us plainly beyond any fair appraisal; in such issues we are at liberty to rely upon our own estimates, the matter being within our special acquaintance as much as within that of other members of the bar. The same applies to the allowance, $6,000 in all, which we have made for the defendant's services in the National City Bank matter.

The other memorandum I shall leave with your Honor is a page and three-quarters, and it simply sets out based upon the papers in the case the computations we have made as to time and amount of fee.

THE COURT: Would you be good enough to read that to me?

124 MR. LESSER: (Reading) Petitioner contends that any fees payable to Mr. Albrecht and reimbursement for expenses herein chargeable to her should not exceed in total the amount of $4,868.62, of which $3,500.00 already has been paid, leaving at most an amount of $1,368.62 presently due to Mr. Albrecht from petitioner.

These figures are arrived at in the following manner

The taking of Mrs. Stinnes' deposition and conferences of counsel in connection therewith lasted from August 30 through October 17, 1955, and involved a total of thirty-eight working days for which compensation is to be computed. Those thirty-eight working days include days during the period when for reasons of Mrs. Stinnes' health her examination was suspended, but do not include Saturdays or Sundays when Mrs. Stinnes was not examined or conferences of counsel were not held. Allowing ten days for travel time (Mr Albrecht traveled to Europe by boat and returned by airplane) seems generous But this time should only be computed at five days for the purposes of fixing the fee since petitioner is informed that it is customary for lawyers to charge only one-half of their basic professional rate for time spent in travel. Thus, travel time plus the above-mentioned thirty-eight working days gives a total of forty-three days for which compensation is to be computed Petitioner submits that
125 the rate at which Mr. Albrecht should be paid should not exceed that allowed to the Special Master appointed by this Court in the Interhandel case, i. e., $200 00 a day, which is to include all expenses except transportation On that basis $8,600. 00 would be due. To that amount should be added Mr Albrecht's travel expenses which, according to his accounts, amount to $1 137 23. The fees and expenses which are due to Mr. Albrecht are in total $9,737. 23.

Mr Albrecht by his own statement made his travel arrangements, including his boat trip to Europe, in response to a letter of the Attorney General dated June 29, 1955, setting a date for the examination of Mrs. Stinnes in a proceeding separate and apart from this proceeding. Petitioner submits, therefore, that since he was traveling to Dusseldorf to examine her for two purposes, she should only bear one-half of the total fees due him and expenses incurred by him in connection with her examination Accordingly, the maximum which Mrs Stinnes should be called upon to pay to Mr Albrecht is $4,868 62 Of that amount, $3,500 00 has been advanced, leaving $1,368 62 still owing

MR. TAUSIG: May I request that we be given a copy of these memoranda. We have never seen them.

THE COURT: They have been read into the record.

Gentlemen, are you ready for my conclusion?

MR. TAUSIG: We are, your Honor.

THE COURT: I have for consideration the expense account which is owing in the sum of $3,459.87. Is that for sums that have been paid?

125-A What has been paid?

MR. TAUSIG: Your Honor, the papers show we have received a total of $3,500.00.

MR. ALBRECHT: Against fees and expenses, your Honor.

THE COURT: Gentlemen, I shall allow; subject to the deduction which has just been mentioned from the total expense account in the sum of $3,459.87. I shall disallow the claim incident to Mr. Butler's services which is stated in the amount of $1,698.07. I shall allow as attorney's fees the sum of $22,800.00.

Mr. Tausig will you see that I get an appropriate order?

MR. TAUSIG: I shall, Sir.

THE COURT: Gentlemen, I suggest that each side take care of their own exhibits.

MR. TAUSIG: Of their own exhibits?

THE COURT: Yes, each side.

(Whereupon the instant proceedings were concluded.)

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JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,457

ELSA W. de WAGENKNECHT and
N. V. EDMUND WAGENKNECHT'S
HANDEL MAATSCHAPPIJ,

Appellants,

v.

MRS. HUGO STINNES, SR., also known
as Mrs. Claere Hugo Stinnes,
Mrs. Clare Wagenknecht Stinnes and
Clare Hugo Stinnes-Wagenknecht,

Appellee.

No. 13,458

MRS. HUGO STINNES, SR., also known
as Mrs. Claere Hugo Stinnes,
Mrs. Clare Wagenknecht Stinnes and
Clare Hugo Stinnes-Wagenknecht,

Appellant,

v.

ELSA W. de WAGENKNECHT and
N. V. EDMUND WAGENKNECHT'S
HANDEL MAATSCHAPPIJ,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In the Matter of the Petition of

MRS. HUGO STINNES, SR., also known as MRS. CLAERE HUGO STINNES, MRS. CLARE WAGENKNECHT STINNES, and CLARE HUGO STINNES-WAGENKNECHT,

Petitioner,

No. 2158-55

ADDRESS: Grossenbaumstr. 253
Mulheim-Ruhr, Germany

TO PERPETUATE HER OWN TESTIMONY

GERMANY)
CITY OF DUESSELDORF)
CONSULATE GENERAL OF THE) SS:
UNITED STATES OF AMERICA)

Deposition of witness, Claere Hugo Stinnes, taken before me, Charles A. Kiselyak, Vice Consul of the United States of America at Duesseldorf, Germany, and Robert L. Dwelley, Vice Consul of the United States of America at Duesseldorf, Germany, under and by virtue of an Order to Take Deposition dated July 11, 1955, and the stipulation of counsel, in the Matter of the Petition of Mrs. Hugo Stinnes, Sr., also known as Mrs. Claere Hugo Stinnes, Mrs. Clare Wagenknecht Stinnes, and Clare Hugo Stinnes-Wagenknecht, Petitioner, Address: Grossenbaumstr. 253 Mulheim-Ruhr, Germany, to Perpetuate her own Testimony, pending in the United States District Court for the District of Columbia, in response to oral interrogatories propounded by James H. Mann, oral cross-interrogatories propounded by Robert J. Wieferich and oral cross-interrogatories propounded by Ralph G. Albrecht.

Claere Hugo Stinnes, Witness, residing at Muelheim-Ruhr, Germany; James H. Mann, Attorney for the Petitioner, residing

at Washington, D.C.; Robert J. Wieferich, Attorney for Herbert Brownell, Jr., Attorney General of the United States, and Atlantic Assets Corporation, residing in Washington, D.C.; and Ralph G. Albrecht, Attorney and Attorney by Appointment of the Court for Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handelmaatschappij, residing in New York City, New York, all being of lawful age, appeared at the Office of the Consulate General of the United States of America at Duesseldorf, Germany, as follows:

3:00 P.M. to 5:00 P.M. - August 30, 1955
3:00 P.M. to 5:30 P.M. - August 31, 1955
3:00 P.M. to 5:30 P.M. - September 2, 1955
3:00 P.M. to 5:30 P.M. - September 3, 1955
3:00 P.M. to 5:30 P.M. - September 5, 1955
3:00 P.M. to 5:30 P.M. - Spetember 6, 1955
3:15 P.M. to 5:30 P.M. - September 8, 1955
3:00 P.M. to 5:30 P.M. - September 9, 1955
3:00 P.M. to 5:50 P.M. - September 12, 1955
3:00 P.M. to 5:20 P.M. - September 13, 1955
3:00 P.M. to 5:35 P.M. - September 14, 1955
3:15 P.M. to 5:30 P.M. - September 15, 1955
2:30 P.M. to 5:30 P.M. - September 16, 1955
3:00 P.M. to 5:30 P.M. - September 19, 1955.
3:10 P.M. to 5:30 P.M. - September 20, 1955
3:00 P.M. to 5:30 P.M. - September 22, 1955
2:00 P.M. to 5:30 P.M. - September 23, 1955
10:30 A.M. to12:30 P.M. - September 26, 1955
3:00 P.M. to 5:30 P.M. - September 26, 1955
2:00 P.M. to 5:30 P.M. - September 27, 1955
11:00 A.M. to12:00 Noon - September 28, 1955
3:00 P.M. to 5:15 P.M. - October 5, 1955.

The witness, Claere Hugo Stinnes, of Muelheim-Ruhr, Germany, of lawful age, was first administered an oath to testify to the truth, the whole truth, and nothing but the truth in the above titled matter.

The answers of the witness to the oral interrogatories were taken down stenographically by Doris Wismer and were forthwith transcribed by her under our direction.

s Charles A. Kiselyak
American Vice Consul

s Robert L. Dwelley
American Vice Consul

Tr 1 This deposition of Claere Hugo Stinnes of Muelheim-Ruhr, Grossenbaumer Strasse 253, Germany, is taken pursuant to the Order of the United States District Court for the District of Columbia, entered on July 11, 1955, a copy of which Order is attached hereto; the said Order having been entered pursuant to a petition of the aforesaid Claere Hugo Stinnes to perpetuate her testimony; and the said Claere Hugo Stinnes having appeared at the United States Consulate General in Duesseldorf, Germany, this 30th day of August 1955; and the following persons having entered appearances as counsel in this matter:

James H. Mann,
appearing for Mrs. Sinnes the Petitioner

Robert J. Wieferich,
appearing for the Attorney General of the
United States and Atlantic Assets Corporation;

Ralph G. Albrecht,
appearing as Attorney and Attorney by Appointment
of the Court on behalf of Elsa W. de Wagenknecht
and N V Edmund Wagenknecht's Handelmaatschappij.

and there being also present Mr. Franz von Papen Jr., to assist Mr. Mann in view of the fact that the witness intends to testify in the German language, and there being also present Miss Charlotte M. Koerner, for the purpose of taking an unofficial German record for

the petitioner, Claere Hugo Stinnes.

Counsel stipulated agreement to the qualification of Mrs. Ilse Pongs of the United States Consulate General staff as interpreter.

Whereupon Mrs Ilse Pongs, the interpreter, was duly sworn, and Miss Doris Wismer, the reporter, was duly sworn, and the petitioner Mrs Claere Hugo Stinnes, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANN

Q. Mrs. Stinnes, please give us your full name and address. A. Claere Hugo Stinnes, Muelheim-Ruhr, Grossenbaumerstrasse 253.

Q. Mrs Stinnes, what was your maiden name? A. Claere Wagenknecht

Q. Please state the date and place of your birth. A. November 26, 1872, Montevideo, Uruguay.

Q Mrs Stinnes, are you a citizen of Uruguay? A. Yes, since my birth

Q Have you acquired any other citizenship? A Yes, by marriage to my husband

Tr 2 Q And what citizenship did you acquire by such marriage? A. The German citizenship

Q. - Mrs. Stinnes, you are a widow, aren't you? A. Yes.

Q. Please state the name of your late husband and when you married him? A. My husband was Hugo Stinnes - June 15, 1895.

Q Of what country was he a citizen? A Of Germany.

Q When did he die? A. April 10, 1924

Q. Where did he reside at the time of death? A. Temporarily in Berlin.

Q. Where did he permanently reside at the time of his death? A. At Muelheim-Ruhr

Q Did you and Mr. Stinnes have any children? A. Yes.

Q. Would you please give the names of the children? A. There were seven children The oldest was called Edmund, the

second Hugo, the following daughter Clarenore, the following son Otto, the following daughter Hilde, the following son Ernst and the then following daughter Else.

Q. Mrs. Stinnes, would you please tell us the present citizenship of each child? A. My son Edmund is a citizen of the United States, my son Hugo is a German citizen. My daughter Claerenore became Swedish by marriage, my son Otto is a German citizen. The same refers to my daughter Hilde, the same refers to my son Ernst and daughter Else.

Tr 3 Q. In what country does your son Edmund reside? A. He has his permanent residence in the United States.

Q. And where does your daughter Claerenore, in what country does your daughter Claerenore reside? A. In Sweden.

Q. Did the rest of your children reside in Germany? A. Yes.

Q. Mrs. Stinnes, were you familiar with your husband's financial affairs at the time of your marriage? A. Yes, in a general way.

Q. How did you know about them? A. Because my husband and I spoke much about the financial situation.

Q. Mrs. Stinnes, how would you describe your husband's financial condition at the time of your marriage? A. Two years before he had founded a firm of his own which was in the state of development, but he had created himself a modest sound basis.

Q. Mrs. Stinnes, you stated that he had a firm of his own. What was the name of it? A. Hugo Stinnes G. m. b. H.

Q. In addition to running his own firm, the Hugo Stinnes G. m. b. H., did he have any other employment? A. Yes.

Tr 4 Q. And what was it? A. He was general plenipotentiary for the whole coal mining of Matthias Stinnes G. m. b. H.

Q. Mrs. Stinnes, after your marriage did your husband inform you of his business activities and discuss important business decisions with you? A. Yes, to a far extent.

Q. Mrs. Stinnes, could you tell us what were the more

important lines of business in which your husband was engaged during his lifetime. A. In coal, iron, inland Rhine shipping and sea shipping, paper pulp and such factories, in import and export trade.

Q. Mrs. Stinnes, did he have participations in any firms in which he did not own the whole of the firm? A. In some which he did not own himself he had participation.

Q. Mrs. Stinnes, can you describe to us how your husband's business developed from the modest beginning, which you described, at the time of your marriage until the time of his death? A. It is a long description. I already mentioned that two years before our marriage he founded a firm of his own. His occupation as plenipotentiary for his mother in the Stinnes Mining Companies brought him, of course, together with many other mining companies. The development of his firm brought about that he had much business to do with the iron trade and iron manufacturing industries. The extension of his branch offices in Germany and abroad in all foreign countries brought him in contact, as it is logic, with the lumber trade of coal mines and thus he came into contact with the East Prussian paper pulp and lumber trade. His area of interest also referred to the development of electricity in Germany and after a short time he became founder and chairman of the board of the still today existing R. W. E. in Essen-Ruhr. Founder of the R. W. E. insofar as for two years he worked together with the firm of Lahmeyer in Frankfurt. They

Tr. 5 founded the plant together with him.

Q. Mrs. Stinnes, were your husband's business interests confined to Germany? A. No.

Q. Can you describe briefly what his business interests outside of Germany were? A. Above all, these were all branch offices of the Hugo Stinnes G. m. b. H. which at the time of his death practically reached all over the world.

Q. Were his foreign business interests confined to the export import trade? A. Of course also to sea shipping.

Q. In addition to import export and sea shipping, did he

have any other interest outside of Germany? A. Yes, he had participation in foreign countries and private property of his own abroad.

Q. Can you tell us how these foreign business interests were held? A. He possessed holding companies abroad and, as I said, property of his own for instance in Buenos Aires the Hugo Stinnes Limitada, or in Mexico, together with the family Giesemann, coffee plantations.

Q. Do you remember the names of any of his other principal companies outside of Germany? A. Above all in Amsterdam the Edmund Wagenknecht Maatschappij; in New York Harry Holleson Inc.; in London Hugo Stinnes Ltd.; in Zuerich the holding company Miro and Fundus; in Copenhagen the own company so-called KKKK; and one I already cited before, Hugo Stinnes Limitada in Buenos Aires.

Q. Mrs. Stinnes, you have testified that your husband had extensive foreign interests. Could you tell us what happened to some of your husband's foreign business interests during the First World

Tr 6 War? A. They were confiscated.

Q. All of them? A. Not the personal property.

Q. Was the property seized in all foreign countries? A. Not in neutral countries.

Q. Mrs. Stinnes, you have testified that your husband had some holding companies outside of Germany. Tell us, if you know, why did he organize holding companies outside of Germany? A. Based on the experiences which he, as many other Germans, had made in the First World War, he thought it right to arrange for holding companies in foreign countries where he could put in values without running the danger of losing them, as in similar occasions before.

Q. Mrs. Stinnes, what was the period of your husband's greatest business expansion? A. It might have been more expansive after the First World War than before, but I cannot state this exactly.

Q. Was the expansion of his business confined to the businesses inside of Germany? A. By no means.

Q. Mrs. Stinnes, how would you describe your husband's financial condition at the time of his death? A. There I can only refer to the obituaries at the time of his death where he was called a billionaire and the owner of at least 250 firms.

Q. Mrs. Stinnes, I hand you a document which has been marked for identification as Petitioner's Exhibit Number 1, and ask you to tell me what it is. A. It is a photostatic copy of the will that has been made by my husband and me.

Tr 7 BY MR. WIEFERICH

I understand from counsel for the petitioner that the original of this certified copy of the will of which we have here a photostat is available in Washington D. C. and that the actual original of the will is filed in the local court in Muelheim-Ruhr, Germany. With that understanding I have no objection to the witness testifying concerning this document.

BY MR. ALBRECHT

I agree in substance with the statement just made by Mr. Wieferich. I understand that Mr. Mann is willing to show me, at my request, the original certified copy of the will which is in his files in Washington and I have no reservations to the introduction of this document into evidence unless it should become necessary to have recourse to the original court documents in Muelheim and any discrepancies may be discovered between those records and the photostat produced.

Q. Can you tell us where the original of that will presently is? A. It is at the County Court Muelheim-Ruhr.

Q. Who is the sole legatee of your husband's will?

BY MR. ALBRECHT

Does not the document speak for itself?

BY MR. MANN

I think it does.

A. I myself.

Q. Mrs. Stinnes, who was the actual head of the enormous

combine of Stinnes Companies during your husband's lifetime ?

Tr 8 BY MR. ALBRECHT

I wish you would re-phrase your question so that we would know more particularly what you intend to cover by the phrase, and I quote: "enormous combine".

Q. Mrs. Stinnes, who was the actual head of the Stinnes Companies taken as a whole during your husband's lifetime ? A. He himself.

BY MR. ALBRECHT

I am afraid that I must object to the phrasing of your question unless you specify particularly what companies you mean to cover. I do not think it is at all clear what is meant by Stinnes Companies.

BY MR. WIEFERICH

Possibly we can shorten this. My notes show that the witness has just testified that at her husband's death he was generally considered the owner of at least 250 firms. If that is what is meant by Stinnes combine, I think the witness could carry on from there.

BY MR. ALBRECHT

I am afraid that that would not wholly satisfy me because the reference to 250 firms, as I understood the testimony of the witness, was merely a statement that appeared in the obituaries that were published after Mr. Stinnes' death.

Q. Mrs. Stinnes, during your husband's lifetime who looked after, who was the over all head of the firms which he owned wholly or in which he had a majority participation ? A. He himself.

Q. Following your husband's death, who succeeded him as the actual head of such companies ? A. I myself followed him as the head and my two sons by virtue of Power of Attorney which I gave them.

Tr 9 Q. Mrs. Stinnes, would it be accurate to say that with the authority given your sons, they served as co-managers of the Stinnes interests ? A. Yes

Q. How long did they continue in the capacity as co-managers ?

A. Until my eldest son Edmund was quitting.

Q. And who then, in effect, managed the Stinnes properties?

A. Under my authority my son Hugo.

Q. How did the Stinnes Companies fare financially in the 15 months period following your husband's death? A. After the 15 months we were forced to obtain banking assistance.

Q. Mrs. Stinnes, tell us, if you know, why the companies got into such financial difficulties? A. Because my two sons, one in Berlin and the other in Hamburg, had undertaken investments and expansions which had caused this crisis.

Q. Had your husband given your sons any advice as to how the firms should be managed after his death? A. Yes, he had imposed on the two sons as most important thing to pay the debts.

Q. Did the sons follow a policy consistent with that advice? A. No, they did the contrary.

Q. When you became aware of what your sons were doing, what did you do? A. When I learned of this I have stepped in.

Q. And what policy did you pursue when you stepped in? A. Through a good friend I approached the Deutsche Bank in order to get a long-term credit in order to replace the short-term credits.

Tr 10 Q. Tell us, if you know, how much money your sons spent in expanding the business in the 15 months following your husband's death? A. More than 150 million Reichsmark.

Q. Did there come a time when the credit of the Stinnes Companies with the German banks was exhausted?

BY MR. ALBRECHT

I suggest that you re-phrase your question as you are leading the witness.

Q. Were you able to continue to get credits from the German banks?

BY MR. ALBRECHT

I do not think that a proper foundation has been laid for your question which queries the approaches made to German banks in

general. The witness, I believe, has only testified to an approach that was made by her to the Deutsche Bank.

Q. Mrs. Stinnes, you testified that you made an approach to the Deutsche Bank. Did you approach any other German banks with a view to getting a loan or credits? A. I have not contacted the other banks, but the Deutsche Bank had informed the other banks and under leadership of Reichsbankpraesident Schacht they formed a banking consortium.

Q. Did the banking consortium lend money and extend credits to the Stinnes Companies? A. 30 millions - but that was not enough.

Q. Did there come a time when the credit which the Stinnes Companies had with the German banking consortium was exhausted? A. Yes.

Tr 11 Q. After the 30 million Reichsmark loan was exhausted, were the Stinnes Companies able to obtain further credits from the German banking consortium or any other German banks? A. The banking consortium was in the long run prepared to extend a moratorium.

Q. Did I understand, Mrs. Stinnes, that at this point you were unable to obtain further loans? A. No, not in Germany.

BY MR. MANN

Counsel are in agreement that the witness answered to the effect that she was unable to obtain further credit from the German banks or anywhere in Germany.

Q. Mrs. Stinnes, when you were unable to obtain further loans in Germany, did you look elsewhere for financial help? A. Yes.

Q. What did you do? A. Under my authority my son Hugo entered into negotiations with American banks in order to obtain financial assistance.

Q. You remember the name of the American bank with which he negotiated? A. A contact which my son Hugo entertained was in London with Dillan Reed. But this led to nothing. Not through the fault of Dillan Reed but of the German banks as far as I know.

Q. After the failing of the Dillan Reed negotiations to produce a credit for the Stinnes Companies, did you attempt to find other sources of financial assistance? A. Yes.

Q. And what did you then do? A. My son Hugo contacted with
Tr 12 my authority Captain Rieber, President of the Texas Company.

Q. And after he contacted him did he enter into negotiations? A. Not personally since he could not leave Germany - through an intermediary in the United States.

Q. And who was the intermediary in the United States? A. Erich Will.

Q. Can you tell us who Eric Will was? A. Erich Will was the brother-in-law of my son. His sister was his first wife.

Q. Which son, Mrs. Stinnes? A. My son Hugo.

Q. At the time that we are talking about, when Eric Will contacted Captain Rieber, how long had you known Eric Will? A. I cannot say it to the month - I estimate at least for two years.

Q. Do you know why Eric Will was then in the United States? A. I know that he was sent to the United States by my husband to get further education. In what kind of capacity he was acting I do not exactly know.

Q. You have testified that through your son Hugo, Eric Will contacted Captain Rieber. What was the result of this initial contact? A. That Captain Rieber agreed to come to Germany.

Q. And what was the purpose of Captain Reiber's visit to Germany? Tell us if you know. A. In the first line to study the property, the purchase of which my son Hugo had suggested to Rieber - the Oil Mining Company Elverath (Gewerkschaft Elverath).

Tr 13 Q. Did Captain Rieber examine the oil property Elverath? A. He inspected it and the result was that his Company would not be interested in buying Elverath.

Q. At the time, did you own other oil companies or oil producing companies in Germany? A. No others than those which the mining companies operated in Germany - it was internal property of

the Stinnes Mining Companies.

Q. Was Captain Rieber interested in buying any of those properties? A No.

Q. Did Captain Rieber examine Stinnes properties in Germany, the Stinnes properties in Germany, other than the Elverath and oil companies? A Highly interested through the information given to him by my son Hugo he made himself familiar with many of the other Stinnes properties in Germany

Q. Did you, or anyone acting for you, discuss with him the financial situation of the Stinnes Companies? A I myself not, but my son Hugo gave him of course full information

Q As a result of the conversations with your son Hugo did Captain Rieber offer any suggestion as to how these companies should meet their situation? A. He promised to my son Hugo that he would enter into contacts, after his return to the United States, with American bankers, in order to obtain the credit looked for by us.

Q. After he returned to the United States, did he do it? A. Yes, after his return he contacted Dr. Saunders in New Orleans, the firm of Becker and the family concern Stuart in Chicago.

Q Did this group of American banks appear to be interested in making a loan to the Stinnes Companies? A. Yes.

Tr 14 Q. Did you yourself go to the United States to negotiate with this banking group? A No.

Q Did you send someone to negotiate for you with the American bankers? A. In the United States Eric Will, who had my full confidence and acted on the advice of my son Hugo, negotiated with the American banks

Q Briefly what was the result of the negotiations with the American bankers? A That representatives of the American bankers, amongst them Dr. Saunders, came to Germany and examined the situation in the Stinnes Companies.

Q Mrs Stinnes I hand you a document marked for identification as Petitioner's Exhibit Number 2 and I ask you to tell me

what it is, if you know. A This document represents one of the printed matters which the bankers desire to send to their customers on the occasion of the issue of a new loan.

BY MR. ALBRECHT

I do not like to object to the introduction of this evidence, but I don't think that any foundation has been laid for the introduction of the same.

BY MR. MANN

I will stand on the introduction.

Q. Mrs. Stinnes, I hand you a document marked Petitioner's Exhibit Number 3 and I ask you to tell me what it is, if your know.

Tr 15 A. This is a sister document to the other one which the American bankers are sending to their customers.

BY MR. ALBRECHT

I make the same objection to this exhibit as to number 2.

Q. Mrs. Stinnes, have you seen before today the two documents which I have shown you? A. I cannot tell. I have received a much larger document at the time, in form of a book, also with the pictures of many industrial firms.

Q. But the question is: have you seen these two documents before? A. To my knowledge not these two documents as far as I know, but I might have forgotten.

Q. Mrs Stinnes, have you seen Petitioner's Exhibit Number 2 and Petitioner's Exhibit Number 3 within the last two weeks? A. I have seen them by chance for the first time.

Q. Mrs. Stinnes, after the American bankers came to Germany were there further negotiations with respect to the American loan? A. The final result was the agreement of an American loan to the Stinnes Companies.

Q. Do you recall the amount of that loan? A. 25 million dollars.

Q. Mrs. Stinnes, can you identify for me Hugo Stinnes Industries Inc.? A. Hugo Stinnes Industries Inc., is the holding

company for all mining property and the Hugo Stinnes G. m. b. H. with all which it possessed.

Q. Where is this Company located? A. That is 100% property of the Hugo Stinnes Corporation.

Tr 16 Q. Did you know where the Company has its offices? A. No, at the moment I do not recollect.

Q. Mrs. Stinnes, can you identify for us the Hugo Stinnes Corporation? A. The Hugo Stinnes Corporation contained everything inside Germany outside the Hugo Stinnes G. m. b. H., and the Stinnes Mining Corporations

Q. Mrs. Stinnes, as a result of the negotiations with the American bankers which you have described, was it necessary for you to transfer certain German property to the American bankers or corporations named by them? A. Yes.

Q. How did you acquire the German properties which you transferred? A. As heir of my husband

Q. Did you transfer to the American companies all of the properties which you received as the sole legatee of your deceased husband? A. No.

Q Can you tell us, Mrs. Stinnes, the properties generally which you retained? A. I stated already Elverath, for which we tried to interest Mr. Rieber. Then certain holding companies which we possessed abroad, as most important perhaps the Edmund Wagenknecht Maatschappij in Amsterdam, the KKKK in Copenhagen.

Adjourned at 5:00 P. M. August 30, 1955, Mr. Mann Continuing the Direct Examination on August 31, 1955 at 3:00 P. M

Q Under the arrangement with the American bankers, what did you receive in return for the German properties which you transferred to the American corporations? A 500,000 shares of Hugo Stinnes Corporation.

Tr 17 Q. What did you do with those shares? A. They were put into a Corporation that was founded for that purpose.

Q. And why were those shares put into that Corporation? A. Because the American bankers required this.

Q. Tell us, if you know, the name of the American Corporation in which you placed those shares? A. The newly founded Corporation had the name United Trading.

Q. Who caused the United Trading Corporation to be formed? A: My son Hugo under my authorization.

Q. Do you recall who in the United States looked after this matter for you or for your son Hugo? A. Erich Will.

Q. Tell us, if you know, when the United Trading Corporation was organized? A. After the arrangements of the American loan had been completed.

Q. When you placed your 500.000 Hugo Stinnes Corporation shares into the United Trading Corporation what, if anything, did you receive in return? A. Atlantic Assets shares.

Tr 18 Q. Mrs. Stinnes, who received, tell us if you know, who received the shares of the United Trading Corporation? A. Erich Will.

Q. Did Eric Will own the shares of the United Trading Corporation? A. He held them for me as trustee.

Q. Who arranged for Eric Will to hold those shares for you as trustee? A. That was an arrangement with my son Hugo.

Q. Did the United Trading Corporation always continue under that name? A. No.

Q. What was the new name? A. Atlantic Assets Corporation.

Q. Tell us, if you can recall, when the name was changed from United Trading Corporation to Atlantic Assets? A. I cannot give the exact day. That must have happened shortly after 1926.

Q. At the time your Hugo Stinnes Corporation shares were deposited with the United Trading Corporation which subsequently became the Atlantic Assets Corporation, did Eric Will hold all of the

shares of United? A. Yes

Q. After United changed its name to Atlantic, did Atlantic subsequently issue other shares? A. Yes

Tr 19 Q. Did Atlantic subsequently issue an amount of shares greater than the number outstanding after you deposited your Hugo Stinnes Corporation shares with United? A. Yes.

Q. Mrs. Stinnes, did you realize that the Hugo Stinnes Corporation shares which you had put into Atlantic, then United, were valuable assets? A. Yes, I knew that

Q. Did you realize that by the issuance of an amount of shares greater than the number you held you became a minority share holder? A. Yes.

Q. Did the fact that you became a minority share holder give you cause to worry? A. No.

Q. Why? A. Because my son Hugo Stinnes had told me that the trustees who held the Atlantic Assets shares for me, guaranteed that in the long run nothing could be changed regarding the title to the property.

Q. Mrs. Stinnes, you state that the trustees held the shares for you. Am I to understand by that that the additional shares were issued to people who held those shares for you? A. Yes I have said so, to such persons and such corporations.

Q. Mrs. Stinnes, do you recall when it was decided that you would ostensibly become a minority share holder in Atlantic Assets Corporation? A. Yes, practically immediately after issuance of the new shares.

Tr 20 Q. Mrs. Stinnes, what was the basis for the decision that you should become ostensibly a minority share holder? A. In order to make impossible a pressure from the German Government, since the situation on the foreign currency control was already that difficult that this could be feared - a pressure to sell my shares of Hugo Stinnes Corporation.

Q. Who made the decision that Atlantic Assets would issue the additional shares? A. Under my authority my son Hugo.

Q. Was this matter discussed with you before the decision was taken? A. As far as I recollect yes.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 4 and I ask you to tell me what it is, if you know? A. This is a joint agreement between myself and the Atlantic Assets in which we both grant to each other the right of first refusal.

Q. Mrs. Stinnes, do you know where the original of this document is? A. I am sorry, no.

Q. Did you sign the original of this document? A. I believe yes, but I cannot swear to it. If I have not signed it my son Hugo has done so.

BY MR. ALBRECHT:

I think that I have no objection to the introduction of this exhibit. The only condition to my consent that I would like to place on the record is that I would first like to have the opportunity to compare it with such copies as are in my possession.

Q. Mrs. Stinnes, would you tell us why the agreement that is set up in this document which I have shown you entered into was made?

Tr 21 A. It was an additional security against the danger which threatened us through possible measures of the German Government at that time - because in this way the Corporation shares were still better protected against the chances of a possible sale.

BY MR. ALBRECHT:

I would like to object to the question and the answer on the ground that the witness is incompetent to state the legal effect that the agreement might have against possible measures by the German Government.

Q. Mrs. Stinnes, you have testified earlier that you deposited Hugo Stinnes Corporation shares with Atlantic Assets, then United Trading Corporation, because the American banking group required this. Can you tell us the reasons for this requirement? A. The American banking group wished that these shares would be put at one place in the

United States and should be kept together in order to safeguard the continuity of the management.

Q. Tell us, if you know, in particular what in management did the American banking group want to see continued? A. As I just said, a continuance of the management policies.

Q. Mrs. Stinnes, was any agreement ever entered into or made between you and Atlantic Assets Corporation for the return to you of your Hugo Stinnes shares at any time? A. Yes.

Q. Was that understanding, whatever it may be, written or oral? A. Only orally.

Q. Under that understanding what did you have to do in order to obtain the return of your Hugo Stinnes Corporation shares?

Tr 22 BY MR. ALBRECHT:

I think I must register an objection to this line of questioning. The witness has testified to the existence of an agreement that was oral. It seems to me that any such agreement, if it existed only orally, would be of no effect and any evidence with respect to it would run counter to parole evidence rule, and I therefore must object to the whole line of questioning directed to the eliciting of details of an alleged oral agreement.

Q. Mrs. Stines, you may answer. A. I only had to give the direction to my agent to return them to me.

Q. How many Hugo Stinnes Corporation shares would be returned? A. 400,000

Q. Did you have to give anything to the Corporation in return for your Hugo Stinnes Corporation shares? A. Yes, of course.

Q. And what did you have to give? A. The Atlantic Assets shares which I held personally.

Q. Do you remember how many Atlantic Assets shares you had to give to the Corporation? A. 1,500

Q. You state that the Corporation would return to you 400,000 Hugo Stinnes Corporation shares. You testified earlier that you received 500,000 Hugo Stinnes Corporation shares. What happened to the others?

A At the time I had received 500,000 and originally placed with the United Trading Corporation. But then, however, and this was done very quickly, I gave away 100,000 shares of my personal property.

Tr 23 Q Mrs Stinnes, I understand that the German term which you have used is ambiguous Did you give away these shares, or did you sell them? I ask this only to clarify the record. A No, I made a present of them

Q To whom did you give these shares, Mrs. Stinnes? A In acknowledgement of the efforts and the services given in connection with the American loan, and as visible sign of my gratitude for this action, I distributed these 100,000 between Captain Rieber, Eric Will, and Monsieur Bertin. And to my son Hugo I gave an option on 50,000 of these shares.

Q Mrs. Stinnes, are you familiar with the handwriting of your son Hugo Stinnes Jr.? A Certainly I am.

Q Are you familiar with his signature? A This too.

Q Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 5 and I ask you to tell me whether that is a photostatic copy of a letter written in the handwriting of your son Hugo Jr. and signed by him? A Yes, without any doubt.

Q What is the document, Mrs Stinnes, which I have just handed you? Mrs Stinnes, am I correct in that it is a photostatic copy of a handwritten letter which your son Hugo sent to Captain Rieber?

BY MR ALBRECHT

I think I shall register an objection on the ground of your characterization of this exhibit being a copy, this is not a copy of a typewritten letter, it is a photostat of a handwritten letter Moreover it is written on a letter head of Hugo Stinnes and to me it has all the appearances of the photostat of an original letter In which event the proffered photostat is, of course, not satisfactory evidence and for the moment I shall reserve my objection on the basis that it appears that Exhibit 5 appears to me a photostat of an original

Tr 24 Q Mrs Stinnes, there is a paragraph in the document which I

have just shown you, which reads as follows, and I quote in translation: "I have asked Erich today, upon request of my mother, to transfer to your name 6,000 shares of Hugo Stinnes Corporation out of the stock of my mother. We hope that this will give you some pleasure." Would you please tell us, if you know, who is the Erich referred to in that letter. A. Erich Will.

Q. Mrs. Stinnes, had you instructed your son Hugo to transfer certain of your shares of the Hugo Stinnes Corporation to Captain Rieber? A. Yes.

Q. Mrs. Stinnes, you stated that some shares were given to one Monsieur Bertin. Could you please tell us who Mr. Bertin is? A. This was a friend of Captain Rieber and one who assisted to obtain the American loan.

Q. Did you know Mr. Bertin personally, were you personally acquainted with him? A. I made his acquaintance in the year 1929.

Q. Was there another name, other than Monsieur Bertin, by which he was known to you? A. The Marquis. Among his friends he was always called the Marquis - he was a Frenchman.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 6 and I ask you to tell me what it is, if you know? A. This is the option treaty which I made out for my son Hugo for the above mentioned 50,000 Hugo Stinnes Corporation shares.

Q. Is that document signed by you? A. Yes, that is my signature.

Tr 25 Q. Did your son Hugo Stinnes Jr. ever exercise that option? A. I do not know about this.

Q. Did you ever receive the $200,000 which, under the terms of the option, he would be required to pay you for the 50,000 shares? A. I cannot say anything about this because I do not know it. To my knowledge no.

Q. Mrs. Stinnes, You stated a moment ago that you had given away 100,000 of your Hugo Stinnes shares. I ask you now whether you actually gave away 100,000 Hugo Stinnes shares, or whether you gave instructions that those shares could be made available to others? A. Under the in-

structions to my son Hugo to act according to my wishes, I of course understood it to be a present because I wanted to be grateful.

Q. Mrs. Stinnes, my inquiry has to do with the number which you mentioned and I ask whether you actually gave 100,000 away or authorized a 100,000 to be given away or taken under option? A. My son Hugo, as far as I recall the course of events, said one day to me, it would be correct to make a present to those gentlemen who had done so much for this transaction. And I believe, as far as I can recollect - one should not forget it is more than 25 years ago, 28 years - that I cannot recollect every detail. As far as I can remember I asked my son: "What do you think I should do?" And then I believe he made this suggestion, I should give 50,000 shares to these three gentlemen. It is certain that we spoke about it how these 50,000 shares should be distributed. Regarding the additional 50,000 shares which were named in the option, this was an action that I did by myself and at that time my son Hugo did not know about this. As far as my memory goes I have made this option at the same time as the 50,000 Corporation shares and he has declined this. And after a short time I have written to him and asked him to accept this option out of pure love for me, and I know this for certain. But I do not possess any document proving this, because through the war I have lost all these documents.

Tr 26 Q. Mrs. Stinnes, are you familiar with the action of the United States Government in vesting certain Atlantic Assets shares? A. Yes.

Q. Tell us, if you know, how many Atlantic Assets shares were vested? A. I cannot say in total how many.

Q. Mrs. Stinnes, tell us, if you know, how many Atlantic Assets shares were registered in your name at the time the United States Government vested them? A. 1,500.

Q. Mrs. Stinnes, did you own any shares of Atlantic Assets in addition to the 1,500 shares registered in your name? A. Yes.

Q. Were there any of the Atlantic Assets shares which were not owned by you? A. Yes.

Q. Who, tell us, who besides you owned Atlantic Assets shares?

A On the basis of an agreement between myself my nephew Hans Heinz Stinnes and my sister-in-law Annie Fischer received each 500 Atlantic Assets shares.

Q Did you own all of the Atlantic Assets shares not owned by Hans Stinnes and Annie Fischer? A. Yes.

Q. You have stated that only 1,500 shares were registered in your name. Can you tell us in whose name the other shares, not owned by Hans Stinnes and Annie Fischer, were registered? A In the name of certain trustees.

Q Can you name those trustees? A An old friend of my husband and myself, Albert Jensen, from Copenhagen, the Edmund Wagenknecht's Maatschappij, Amsterdam, and I think also Captain Rieber

Tr 27

Q. Were shares which you own registered in the names of Albert Jensen, Edmund Wagenknecht's Handelmaatschappij and Captain Rieber? A. Yes, the three Corporations were trustees for my Atlantic Assets shares.

Q Mrs Stinnes, did you mean three Corporations or the three names which you have just given? A Two names and one corporation - Albert Jensen as person and Captain Rieber as person, and the Edmund Wagenknecht Maatschappij Amsterdam as my Corporation.

Q. Mrs. Stinnes, how did you select these trustees in whose names your Atlantic Assets shares were registered? A. These were chosen by my son Hugo and myself in mutual agreement after the principle: the most trustworthy friends and the safest corporations which are 100% reliable.

Q. Mrs Stinnes, you have testified that Edmund Wagenknecht's Handelmaatschappij held some of your Atlantic Assets shares as your trustee. Do you know the history of Edmund Wagenknecht's Handelmaatschappij? A In general, but not in all details It was a financial and banking firm

Q Tell us, if you know, who founded the Edmund Wagenknecht's Handelmaatschappij? A It was founded by my husband in 1923.

Q. How did you know about the Edmund Wagenknecht's Handelmaatschappij? A. Because my husband was fond of informing me in full details about his activities.

Q. Was the Edmund Wagenknecht's Handelmaatschappij in existence during the lifetime of your father? A. No.

Tr 28 Q. Tell us, if you know, for whom was Edmund Wagenknecht's Handelmaatschappij named? A. After my eldest brother who had the same name as my father

Q. Why was this Corporation named after your brother? A. Because it was a good neutral name.

Q. Why did you not call it the Hugo Stinnes Handelmaatschappij? A. My husband did not like it to put his name in the forefront in holding companies in foreign countries.

Q. Tell us, if you know, who supplied the capital for the Edmund Wagenknecht's Handelmaatschappij? A. My husband.

Q. Did your husband at the time of his death own all of the shares of that Company?

BY MR ALBRECHT

I object to this question on the ground that the witness is not competent to testify as to such a legal conclusion.

Q. You may answer A. Of course.

Q. After your husband's death, Mrs Stinnes, who was the owner of the shares of the Edmund Wagenknecht's Handelmaatschappij? A. As heir of my husband, I myself

Q. At that time, Mrs. Stinnes, did anyone other than you own any of the shares of that Company? A. To my knowledge no.

Tr 29 Q. Mrs Stinnes, after your husband's death, did you give instructions for the running of the operations of the Company for its over all policies? A. No, I have not done so in detail. This continued the same way my husband had arranged it

Q. After your husband's death and in the ten years following, did anyone ever tell you that they were the owner of all or any part of the Edmund Wagenknecht's Handelmaatschappij? A. Not in the following

ten years.

Q. Mrs. Stinnes, you testified, at the time about your husband's death you became the owner of the shares of this Company. Since that time, have you given any of those shares away? A. No

Q. Did you yourself have possession of the shares of this Company? A. They were not in my portefeuille in Muelheim, but deposited with the Company itself in Amsterdam. However, they were my possession.

Q. For clarification, Mrs. Stinnes, I ask you if I am correct in understanding that the shares were physically in Amsterdam, but that you claimed that they were your shares? A. Yes, I do claim this absolutely.

Q. Mrs. Stinnes, do you know who held these shares for you in Amsterdam? A. The person who was running the business in Amsterdam as responsible director.

Q. Mrs. Stinnes, who arranged to have the shares held for you in the manner which you have described? A. This was done within the authority of my son Hugo after my husband deceased - before through my husband.

Q. Mrs. Stinnes, tell us, if you know, who was Otto Kellermann?

Tr 30 A. That was the first manager respectively director of Edmund Wagenknecht's Handelmaatschappij.

Q. Did you know him personally? A. Yes.

Q. Is he now dead or alive, do you know? A. Unfortunately he killed himself during the war.

Q. Tell us, if you know, who is Hans Karl von Linsingen?

A. This is the successor of Mr. Kellermann in the management of Edmund Wagenknecht's Maatschappij.

Q. How was Mr. von Linsingen chosen for this position? A. The same way Herr Kellermann was chosen for this position at the time.

Q. Was Mr. Kellermann an employee of one of the Stinnes interests before he assumed his position? A. No.

Q. When Mr. Kellermann was succeeded by Mr. von Linsingen, tell us, if you know, where Mr. Kellermann went to work. A. To us to

Berlin.

Q. By "us", do you mean that he was then employed by a Stinnes Company? A. Yes, he was an employee of the financial department of the Hugo Stinnes firm in Berlin

Q. Did you select Hans Karl von Linsingen as Mr. Kellermann's successor? A. I suppose that he was recommended to my son Hugo by Mr. Kellermann because both came from the same firm in Amsterdam, de Bary.

Q. Did you know Mr. von Linsingen personally? A. Yes, very well.

Tr 31 Q. Do you recall when you first made his acquaintance? A. I cannot say the day and hour. I know that Mr. von Linsingen was a guest in my estate in Sweden in 1930, but I think I made his acquaintance shortly before that in Nordwijk where I stayed together with some of my children. However, the latter I cannot swear to - I am only reflecting this.

Q. Do you recall when you last saw Mr. von Linsingen? A. I believe in 1952 - I believe in 1952.

Q. Mrs. Stinnes, during the period of your acquaintance with Mr. von Linsingen, did you see him often? A. In the course of the years we became very good friends and have always met from time to time.

Q. Generally speaking, what was the purpose of those meetings? A. A friendship, if it includes the wives, generally makes it a common habit that if one is at the same place invitations are offered and visits paid. Besides this, Mr. von Linsingen used these opportunities when it was possible to meet under four eyes, to tell me this and that on the Edmund Wagenknecht's Handelmaatschappij

Q. Mrs. Stinnes, did Hans Karl von Linsingen have a Power of Attorney from you? A. No.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 7 with the translation Number 7a and I ask you to tell me what it is? A. This is a letter of congratulation from Mr. von Linsingen to me on the occasion of my 80th birthday.

Q. Is Hans Karl von Linsingen presently employed by you or any

of your Companies? A No, he left us at the time of the last war.

Tr 32 Q. Tell us, if you know, by whom he is presently employed? A. I do not know. I only believe that now he has the Power of Attorney of my sister-in-law Elsa Wagenknecht.

Q. You mentioned that some of your Atlantic Assets shares were held by Albert Jensen. Could you tell us who was Albert Jensen? A. Albert Jensen is a friend of my husband for decades, since my husband made him the manager of the KKKK in Copenhagen, which were founded by him. And in the course of the years he has also done several other business transactions with him. The whole family became good friends with him, also my children, and partly are today.

Q. Did you personally know Albert Jensen? A. Yes, and how!

Q. Is he alive or dead? A. Unfortunately he is not alive anymore.

Q. How long did you know him? A. I think I knew him before the First World War. I do not know exactly the day of the foundation of the KKKK, but I think I met him before the first World War. Certainly during the First World War because I recollect that during the First World War I was together with him at the occasion of a business meeting between my husband and myself and also the father of Albert Jensen, who was a well-known shipping operator. We were together the whole evening in Malmoe.

Q. Had your husband ever used Albert Jensen to hold any property as his trustee? A. I believe yes, as well as I have done it.

Q. Did you have complete confidence in Albert Jensen during his lifetime? A. 100%.

Tr 33 Q. Mrs. Stinnes, in your testimony you have made several references to Captain Rieber. Who is Captain Rieber? A. Captain Rieber was President of the Texas Company in USA and I got to know him in 1929 when I came to the United States for the first time for several weeks.

Q. Mrs. Stinnes, tell us, if you know, who is Dr. Kurt Brunner? A. He was a lawyer who was manager or director of two of our holding companies in Zuerich.

Q Can you tell us the name of those companies? A. Mira and Fundus.

Q. Did you know Dr. Kurt Brunner personally? A. Occasionally I was together with him, but I did not know him very well.

Q. Who is Karl Axel Soederstroem? A. My son-in-law.

Q. Which of your daughters did he marry? A. My eldest daughter married him.

Q. When did he marry your daughter? A. December 1930.

Q. Did you ever know a Dr. Schring? A. Yes, I knew him.

Q. Who was he? A. He was the trusted lawyer of Albert Jensen.

Q. What was your father's name? A. Edmund Wagenknecht.

Tr 34 Q. Of what country was your father a citizen? A. Of the Gross-Herzogtum Hessen-Nassau, as long as it existed.

Q. Where did he and your mother reside at the time of your birth? A. In Montevideo, Uruguay.

Q. Are you familiar with your father's financial condition at the time of your marriage? A. To a certain extent.

Q. How would you describe your father's financial condition at the time of your marriage? A. That he was, according to German standard, a wealthy man.

Q. Tell us, if you know, how he made his money? A. He immigrated to La Plata as a young man and was engaged by the firm Malmann & Co., Paris, and very soon became closest collaborator in Montevideo of the then head of the Montevideo branch of Malmann a certain Mr. Ziesemann. After Mr. Ziesemann retired his position in Montevideo my father became his successor - I believe already at the age of 30 years. Later on he also took over the leadership of the firm in Buenos Aires until in the year 1885 he returned to Germany. In this position on the La Plata he made his fortune.

Q. Did your family accompany your father when he returned to Europe? A. Yes, the whole family.

Q. Why did your father and the family return to Europe?

A. Principally because my father wanted his four sons to be educated in

Germany on a German high school

Q. You have testified that the Edmund Wagenknecht's Handelmaatschappij was named after your brother Edmund Wagenknecht. Was he, your brother Edmund Wagenknecht, also known as Don Edmundo Wagenknecht? A Yes, because on the La Plata he was only known as Don Edmundo.

Tr 35 Q. When the family returned to Europe, what did Don Edmundo study? A After he graduated from High School in Wiesbaden he first went to Geneva and then to London to study.

Q What did he study? A I do not know what he studied in Geneva. I think it was in the first line to get acquainted with the French language. In London he was put by my father as a volunteer in a well-known private banking firm in order to get his business education

Q. Where did he go after his study in the banking firm in London? A. Then he returned to his fatherland to Montevideo, Uruguay - to the capital Montevideo

Adjourned at 5 30 P M August 31, 1955, Mr. Mann Continuing the Direct Examination on September 2, 1955 at 3:00 P M

Q Are you familiar with the subsequent career of your brother Edmund after he left London and returned to Uruguay? A. As far as I remember he opened up a business firm in Montevideo with the former first wool expert of my father in the firm of Malmann, a man called Karl Fritz

Q. Was Don Edmundo engaged in business with your late husband in any way in the La Plata region? A. Not at that time, but later on.

Tr 36 Q. When was your husband engaged in business with Don Edmundo? A. As far as I remember he was engaged in business together with him already during the First World War when my brother was forced to remain in Europe, in Copenhagen

Q. Did you brother remain in Europe after the First World War had come to an end? A No, he returned to the La Plata

Q. And what did he do then? A As far as I know he returned to

his old firm in Montevideo

Q Was he at any time after the First World War engaged in business with your husband in South America? A. Yes, at the time when my husband founded the Hugo Stinnes Limitada in Buenos Aires

Q Did Don Edmundo have a participation in the Hugo Stinnes Limitada? A I cannot say that for certain.

Q. Do you know what position he held in the Hugo Stinnes Limitada? A. As far as I know he was in the same position as another gentleman, as manager of the Limitada.

Q. What happened to the Hugo Stinnes Limitada, did it prosper or did it fail? A. It could not prosper because it was too young a foundation. It failed through the financial crisis of my firm after my husband's death in the year 1924

Q. Was the Hugo Stinnes Limitada liquidated? A. Many parts of the Limitada were sold and as far as I know that part that only dealt with harbor shipping in Buenos Aires was taken over by Witthoefft in Hamburg and myself 50 to 50 - that means I retained 50.

Tr 37 Q. When this business was sold as you have stated, did Don Edmundo remain with the Hugo Stinnes Limitada? A. No.

Q. When this business was sold, did Don Edmundo realize anything from it? A As far as I know, no.

Q. Mrs. Stinnes, what did Don Edmundo do after the Hugo Stinnes Limitada was sold? A. He endeavored to create a new firm of his own.

Q. Did the new business prosper? A Unfortunately no.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 8, and I ask you to tell me what it is. Also, let the record show that the translation has been marked for identification as Petitioner's Exhibit Number 8a. A Yes, this is a letter by myself to my son Hugo

Q. Am I correct, it is a letter in your handwriting and signed by you? A. My handwriting and my signature as I used it with my children.

Q. Mrs. Stinnes, I will read you an excerpt from that letter in translation, and I quote "Brother Edmund's information is a heavy weight

on my soul, and I feel with him, knowing myself altogether too well from own experience what it means to have to fear for your own good name. I pity him, in spite of all, very much." Mrs. Stinnes, what was the information that was the heavy weight on your soul? A. It is very long ago. I can only believe that I was informed that he was once more practically bankrupt. This appears from the contents of the letter, since I was afraid for his name.

Q. Mrs. Stinnes, I read you the following paragraph from your letter in translation: "What the business letter of the Edmund Wagenknecht company writes to you, respectively our address, I can naturally not judge as to its correctness. If there are any possibilities to help
Tr 38 saving, please investigate them. For my own part, I put at the disposal without hesitation 100,000,-- Mark out of my savings of the last year, since I see in the name Edmund Wagenknecht grandfather's name and only act in such a way in his memory, and I would have to act in this way." Mrs. Stinnes, did you let Don Edmundo have the 100,000 Mark mentioned in that portion of your letter which I have just read? A. I do not remember having received an answer from my son Hugo to this letter. Neither having given 100,000 Mark to him I suppose, after reading this letter, because these are facts, that my son Hugo said to himself: "This money goes to a bottomless pit, this is very well meant by my mother, but it is a shame for her money"

Q. Mrs. Stinnes, what finally happened to Don Edmundo's business interests in the La Plata, his firms? A. He went bankrupt, he had to liquidate.

Q. After his firms went into bankruptcy did Don Edmundo suspend all payments in South America? A. Yes, of course.

Q. Did he continue to live in Buenos Aires after he suspended payments? A. No.

Q. Where did he go? A. He went to Europe, to Germany and Sweden.

Q. Tell us, if you know, when was this? A. This must have been around 1930.

Q. Do you recall how long he stayed in Germany? A. I believe about three years, I cannot say it to the day.

Tr 39 Q. After he left Germany, do I understand he went to Sweden? A. No, he stayed in Berlin, Germany, with his sister, residing there or in Asa, Sweden where we had offered him and his wife a domicile - that means I.

Q. What is Asa, and where is it? A. Asa was a large estate which I had inherited from my husband.

Q. Were you the owner of that estate at the time you offered Don Edmundo a domicile there? A. According to Swedish law nominally yes, internally no, because during the crisis of the Stinnes firms in 1925, it was sold to the Hugo Stinnes Corporation.

Q. Mrs. Stinnes, was Asa sold to the Hugo Stinnes Corporation or was it mortgaged to the Hugo Stinnes Corporation? A. Yes, it was mortgaged to the amount of the estimated value.

Q. Mrs. Stinnes, did your brother Don Edmundo Wagenknecht ever own Asa or claim to own any part of it, insofar as you know? A. Neither did he possess Asa, nor did he ever claim it, or parts of it, from me.

Q. Was Don Edmundo ever the manager of Asa? A. No.

Q. Who was the manager of Asa at the time that Don Edmundo was there? A. My son-in-law Axel Soederstroem who was appointed by me.

Q. Mrs. Stinnes, are you familiar with Don Edmundo's financial condition at the time he lived at Asa? A. Well, insofar as he received, after an arrangement I made with my children, those funds which they gave him, and also his wife whenever she resided in Asa. In addition, whenever he was in Germany and generally I took over his two foster children entirely, and paid for them.

Tr 40 Q. Mrs. Stinnes, do I understand that when Don Edmundo was in Germany you supported him as well as the children? A. Yes, practically yes. And my sister also assisted in this when he was in Berlin. I supported the children altogether because they stayed in Germany and went to school in Germany.

Q. Mrs. Stinnes, why was it necessary for you and your sister to take care of Don Edmundo when he was in Germany? A. Because he was a poor man.

Q. Mrs. Stinnes, are you familiar with the signature of your brother Don Edmundo Wagenknecht? A. Yes, very well.

Q. Mrs. Stinnes, I show you a document marked for identification as Petitioner's Exhibit Number 9, translation Number 9a, and I ask you to tell me what it is. A. That is a letter from my brother Edmund to me.

Q. Is it signed by him? A. Signed by him.

Q. Mrs. Stinnes, the first paragraph of that letter states that certain accounts are enclosed. Tell us, if you know, what were those accounts? A. The eldest foster child, called Irmita, was put to a boarding school in Braunschweig, as far as I remember, and it must have been necessary for her to take some X Ray treatment. I can only say that I do not remember any details because it is so very long ago, but I had to make some payments in any case.

Q. Did he send you bills on more than one occasion that you were to pay for him? A. He might have been forced to do that, but really, I cannot remember this in detail.

Q. Do you recall how Don Edmundo obtained his pocket money while he lived in Asa? A. From my daughter, respectively my son-in-law,

Tr 41 I know this for sure.

Q. How did you know that, Mrs. Stinnes? A. Because my children occasionaliy told me this.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 10, and I ask you to tell me what it is. Let the record show that the translation is Petitioner's Exhibit Number 10a. Can you tell me what it is? A. This is a letter from me to my eldest daughter Claerenore married Soederstroem.

Q. Am I correct then you stated that that is a letter written to your daughter Claerenore in your own handwriting? A. In my own handwriting.

Q. How do you happen to be in possession of that letter? A. Because through some chances during the war and after the war, it probably was returned to me with many other letters.

Q. Was it returned to you by your daughter Claerenore? A. It may also be possibly. This is very long ago.

Q. Mrs. Stinnes, I refer you to a part of that letter, Petitioner's Exhibit Number 10, which in translation reads as follows: "Apart from that, you give to him as up to now and corresponding to old arrangements what he will possibly need." Tell us please whom you meant by that statement? A. As I said before, this refers to an agreement which I had made with my children, since I was unable to send the money to Sweden, that they may give him the money in Sweden while I did so in Germany.

Q. Could you tell us to whom you refer by "him" and "he" in the passage of the letter which I have just read? A. "He" is my brother.

Q. You mean your brother Don Edmundo? A. By "him" I mean
Tr 42 my brother, "he" is Don Edmundo and this refers again to the arrangement which I explained I had made with my children in case he had some small wishes, for instance he wanted to have a new tie. He was always very modest in his wishes that I filled his requests. In the year 1933 it was not possible any more to send money to Sweden from Germany.

Q. Mrs. Stinnes, I refer you to a further part of Petitioner's Exhibit Number 10 which in translation reads as follows: "Irmita has been taken care of up from October 1. Elsa probably does not remain any longer in Hamburg but will give me the pleasure of her coming. But I intend to send her to a cure in Raffelberg or somewhere else at first so that she cannot tell everybody "nothing was done for her". You can be assured that she will hear a lot from me." Who is Irmita referred to in the portion which I have read? A. Irmita is the foster daughter I referred to in this letter.

Q. Mrs. Stinnes, what did you mean when you said she has been taken care of from October 1? A. In this letter, I do not know when it

was written. I am writing "Elsa wished to put Irmita into a Boarding School which costs at least 150 Mark per month". This was no good news for me because it was a very large amount

Q Mrs. Stinnes, could you look at the letter and tell me when that letter was written? A Unfortunately I cannot tell the 22nd of which month 1933, it just has this punching hole

Q. Did you take care of Irmita all the time that she was in Germany? A. As far as I remember, yes.

Q. Who is the Elsa mentioned in the part of that letter which I have just read to you? A. The wife of my brother, my sister-in-law.

Q. Do I understand that she was the wife of your brother Don Edmundo Wagenknecht? A. Yes.

Tr 43 Q. Did you send her to Raffelberg for a cure? A. I do not think this was done, I do not remember it.

Q. Did you pay for any of your sister-in-law's expenses when she was in Germany? A Yes, insofar as good friends and relatives in Hamburg did not help her.

Q Did she live in Asa with Don Edmundo? A For a long time she was in Asa with Don Edmundo I had established there an own home for them

Q Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 11 and I ask you to tell me what it is. Let the record show that the translation has been marked Petitioner's Exhibit Number 11a By agreement the translation is only of the relevant excerpt from the letter A According to the handwriting, I need not read the signature, this is a letter from me to my daughter Claerenore in Sweden.

Q. This letter mentioned Elsa and Irmita. Do I understand that Elsa is Don Edmundo's wife and that Irmita is his foster daughter? A Yes

Q Mrs Stinnes, how long did Don Edmundo live at Asa? A I think I said it before already, I believe two to three years I do not know it exactly

Q. Do you recall when he left? A. I believe some time in 1933, I do not know the exact time.

Q. The question I asked, Mrs. Stinnes is, do you recall when he left Asa? A. I really do not know the month and the day.

Q. Do you recall why he left? A. When he left for good it was because we had made him an offer in order to give him a new field of activity. Since we were always endeavoring to assist him as far as we could and we felt deeply sorry for him.

Q. Mrs. Stinnes, what was the new field of activity which you had found for Don Edmundo? A. We possessed coffee plantations in Mexico 50 to 50 with a family Giesemann acquired already by my husband. And the time arrived when the Mexican Government issued laws which made it impossible for foreigners to possess land in certain areas in Mexico, or maybe not at all.

Q. Was Don Edmundo sent to these plantations? A. Yes.

Q. And what was he instructed to do there? A. He was instructed to protect the plantations against expropriation by the acquisition of Mexican nationality as quickly as possible, since we as Germans could not do this, and besides by his Uruguayan nationality, his knowledge of the Spanish language, his ability to get along with the Indios, which he was able to do very well as was found out later.

Q. Who gave him those instructions? A. My son Hugo with my authority.

Q. Did Don Edmundo become a Mexican citizen? A. Yes; very quickly.

Q. Did Don Edmundo have any participation in these plantations?

A. No.

Tr 45 Q. Did your brother Don Edmundo have your complete confidence?

A. 100% he had my confidence.

Q. What, if anything, did your husband ever do to indicate whether he had confidence in Don Edmundo? A. By nominating him, at the time, co-manager of the Hugo Stinnes Limitada.

Q. Had your husband ever used Don Edmundo as a trustee for his

property? A Yes, trustee with these plantations

Q Had your husband ever used Don Edmundo before that time to trustee any property for him? A In the Edmund Wagenknecht's Maatschappij Amsterdam

Q. Had you trusted Don Edmundo to hold some of your property for you? A Yes, this is contained in it.

Q. Mrs Stinnes, I am told that your last answer is ambiguous in the German. Accordingly I should like to ask you again: did Don Edmundo ever hold any property for you as your trustee? A. As trustee he held property.

Q. He help property for you? A For me as trustee.

Q. Did Don Edmundo during his lifetime ever claim as his own any of the property which he held as trustee either for you or for your husband? A. Never.

Q. When did Don Edmundo die? A. April 1946

Tr 46 Q. Who of his immediate family survived him at death? A His wife Elsa

Q Have you been advised with respect to any claims that Mrs. Wagenknecht has made before the Office of Alien Property in Washington? A. Yes.

Q. Does his widow, Mrs Wagenknecht, claim any property as her own which was left to you by your late husband as the sole beneficiary of his will? A Yes, for instance the coffee plantations

Q. Is that the extent of the property which she claims? A No, this is not the entire extent

Q. Did you ever give to her or to Don Edmundo any of the property which she claims? A. No

Q Did you ever sell to her or to Don Edmundo any of the property which she claims? A. No

Q. Did you ever sell to her or to anyone else any of your shares of the Edmund Wagenknecht's Handelmaatschappij? A No.

Q When did your father die? A December 1921

Q. When did your mother die? A. March or April 1922.

Tr 47 Q. Did your father leave a will at his death? A. Yes.

Q. Who was the executor of that will? A. My husband and as his successor I myself.

Q. Tell us, if you know, why your father appointed you and your husband as his executor instead of Don Edmundo? A. Because my father had very little confidence in the business capacities of my brother Don Edmundo and at a certain opportunity where he had entrusted him with his interests he had made very bad experiences.

Q. What was this bad experience, could you tell us that briefly? A. Exactly. Ten years after the exit of my father from the firm Malmann & Co. in Paris this firm went into bankruptcy as my father had foreseen it because they sold the basis of the firm against the will of my father. Out of decency, because my father had made his money in this firm, my father left that part of his money which he had made with the firm with it at the time of his exit because they had shown such great confidence in him. At this opportunity he lost that part of his property. Then he entrusted his son Edmund Wagenknecht with the representation of his interests during the bankruptcy negotiations. He proved to be too weak vis-a-vis the other parties so that my father lost that part of his property 100% finally at this opportunity.

Q. Mrs. Stinnes, when your father died did he leave an estate of any value? A. No, he did not leave any considerable fortune.

Q. What happened to the considerable property which you earlier testified he possessed at the time of your marriage? A. This cannot be said in one word. He felt inclined to make the suggestion to my father during the time of the inflation to sell a good portion of his fortune to his firm in Hamburg, the Hugo Stinnes Reederei und Schiffahrtsgesellschaft, so that he should not face one day to be without anything.

Tr 48 Q. Mrs. Stinnes, who made this suggestion to your father.

A. My husband.

Q. Did your father follow his suggestion? A. Yes gladly.

Q. Did your father turn over his property to the Stinnes Hamburg firm? A. A considerable part.

Q. What did he receive in return for that property? A. A life-long pension for himself and his wife in sufficient extent.

Q. Mrs. Stinnes, how do you know about this transaction. Did your husband and your father discuss it with you? A. My husband, as far as he had the time, informed me of all important events in the firm and whatever he had on his mind.

Q. Was the property which was turned over to the Hamburg firm valuable property? A. Yes, these were valuable shares.

Q. Did the property which your father sold to the Hamburg firm remain with the Hamburg firm? A. No.

Q. To whom or to what firm were these properties transferred? A. As far as I know he deposited it in total with the Edmund Wagenknecht's Maatschappij after the formation of the Edmund Wagenknecht's Maatschappij.

Q. Did you have brothers and sisters in addition to Don Edmundo who survived your father and mother? A. Yes, one brother and one sister.

Tr 49 Q. Did they at any time ever make any claims upon you because of the transaction whereby your father transferred his fortune to the Stinnes Hamburg firm? A. No.

Q. Did they, or any of them, ever complain about that transaction? A. My sister no; my brother sometimes made a remark to the effect that he had come off badly through the arrangement of my father with my husband.

Q. Did you ever consult a lawyer to ask him whether you legally owed any money to your brothers and sisters because of that transaction? A. Yes. There was not the slightest legal obligation to give anything at all.

Q. Was that what your lawyer told you? A. Yes, there was not the slightest legal obligation for me to give anything to my brother and sister.

Q Notwithstanding that advice, did you ever pay any money to your brother and sister because of the transaction which you have described? A Yes, one day we gave to my brother and my sister out of pure loyalty something

Q Why did you decide to make this payment to your brother and sister? A Because among sisters and brothers one feels sorry if one is worse off than the other - really for pure loyalty

Q When did you decide to make this payment? A The end of 1928, beginning of 1929

Q Why did you wait until 1929 to make this payment to your brother and sister? A After the year 1924, which is well known we

Tr 50 came into a crisis and were so involved with the regulation of our own affairs that we had no time and no possibility to deal with this. In addition, at that time we could also for tax reasons not do anything special Then, in 1928, beginning of 1929, the revaluation laws were issued by the Government and we availed ourselves of these to make relevant suggestions to lay them down and execute them

Q Mrs Stinnes, do I understand that the payments to your brother and sister were in the form of revaluation payments? A No, that would be wrong to say The revaluation laws gave us the possibility to make payments from abroad

Q Mrs Stinnes, by taking advantage of the revaluation laws, could these payments be made without having to pay taxes? A Yes, they were free of tax

Q Mrs Stinnes, did you have sufficient funds in Germany to make payments to your brother and sister? A No

Q What assets outside of Germany did you anticipate using to make payments to your brother and sister? A Assets which we had with the Edmund Wagenknecht's Maatschppij

Q Were assets with the Edmund Wagenknecht's Maatschappij eventually used to pay your brother and sister? A Yes.

Q Tell us briefly how this was done A My sons Hugo and Otto had worked out a special suggestion and we went to La Plata in

order to confer these suggestions with Don Edmundo Since we used the Edmund Wagenknecht's Handelmaatschappij we wanted to have his consent and his signature

Tr. 51 Q. Why was it necessary to have either his consent or his signature? A. The form had to be kept because he was trustee for myself in the Edmund Wagenknecht's Maatschppij which bore his name

Q. Did the assets which were paid to your brother and sister belong to Don Edmundo? A. No, they belonged to the Edmund Wagenknecht's Maatschappij

Q. And who owned the Edmund Wagenknecht's Maatschappij? A. Edmund Wagenknecht's Maatschappij was my property

Q. Where did the arrangements actually take place for the paying of money to your brother and sister? A. At Buenos Aires where my brother lived at that time

Q. Did you personally go to Buenos Aires? A Yes, my son Otto, I myself and my youngest daughter who accompanied me

Q. To whom were payments made? A In execution of this arrangement payments were made to my brother Walter and my sister Nora and the Edmund Wagenknecht's Maatschappij was informed by my brother in accordance.

Q. Why were no payments made to other members of your family? A. They had either already been taken care of or had such debts to my husband or myself, and my brother Edmund had also been taken care of by everything which he received continuously from his father

Q What had happened to the money which Don Edmundo had already received from his father? A The money had always been put into his firm or been used for the rebuilding of his firm before his bankruptcy

Tr 52 Q. Did you make any payments to yourself? A I was the owner of three parts

Q. Did you give a present to Don Edmundo when you left Buenos Aires? A Yes, I did so of course

Q. And what was the present? A. This was a very modern frigidaire.

Q. And why did you give Don Edmundo a frigidaire? A. Because I felt sorry that my brother and his wife had to be in this heat without any frigidaire and my brother had told me that he was not in a position to buy one.

Q. Who paid for the refrigerator that was given to Don Edmundo as a present? A. Myself.

Q. Did you make the payment directly? A. I cannot say this, I have left it to my son Otto.

Adjourned at 5:30 P.M.

September 2, 1955, Mr. Mann
continuing the Direct Examination
on September 3, 1955, at 3:00 P.M.

Q. Mrs. Stinnes, Did your son Otto pay for this refrigerator out of his own funds? A. No, my son Otto did not do so.

Q. Do you recall what funds he used to pay for the refrigerator? A. The means of the Edwagmij.

Tr 53 Q. Do I understand that the Edwagmij was instructed to pay for the refrigerator which you gave to Don Edmundo as a present? A. Yes.

Q. Insofar as you know, did the Edwagmij pay for the refrigerator? A. Yes.

By Mr. Mann:

Let the record show, in case it is not clear, that the term Edwagmij is a short name for Edmund Wagenknecht's Handelmaatschappij.

Q. Was the Wagenknecht settlement which you have described the only estate settlement you made? A. No.

Q. What other settlement did you make? A. An additional with the sisters and brothers of my husband.

Q. Why did you make a settlement with the brother and sister of your husband? A. For the same reason as with my sister and brother - for loyalty.

Q. Why did you feel that any settlement even for reasons of loyalty was required? A. Because I said to myself if I have been acting that way to my sisters and brothers without being legally obliged to do so, then it is only fair to act the same way vis-a-vis my husband's sisters and brothers

Q. Had your husband inherited property from either his mother or his father? A. Since his mother died after him this was impossible.

Tr 54 Q. When his mother died did she leave an estate of any considerable value? A No

Q. Then, if his mother left no estate, why did you feel called upon to settle with other members of his family? A. I did not feel obliged.

Q. Did you make a settlement with the members of the Stinnes family? A I cannot call this an inheritance settlement, I made a settlement of my free will for reasons of justice and loyalty, the same way as I did it with my sisters and brothers

Q. Mrs Stinnes, you testified earlier that your husband had a Power of Attorney from his mother to represent her interests in the coal mines You have also told us that at her death she left no estate of any value What happened to her property in the meantime?
A With the property of my mother-in-law?

Q. Yes A My husband had suggested to his mother for the same reasons as at the same time to my father, to sell to his firm in Hamburg, the Hugo Stinnes Schiffahrts-und Ueberseehandel, considerable values of her property so that she should not one day be left without any considerable means through the time of the inflation

Q Was such an agreement actually entered into? A Yes.

Q. Was the property which was received from your husband's mother put into the Hamburg Stinnes firm? A I cannot say it exactly,

Tr 55 it may have been put into the firm in the beginning, but later on into the Edmund Wagenknecht's Maatschppij Amsterdam

Q. Mrs Stinnes with what members of the Stinnes family did you make a settlement? A With the son Hans Heinz Stinnes, the son

of the eldest brother of my husband who deceased in the meantime, and with my sister-in-law, his only sister Annie Stinnes, married Fischer, and with Gustav Stinnes his youngest brother.

Q. Did you pay them money? A. No.

Q. What did you give them? A. I gave each party 500 shares of Atlantic Assets.

Q. Did anyone of the three people named refuse to accept that stock? A. Yes, my brother-in-law Gustav declined this offer.

Q. You have testified that you are familiar with the action of the American Government in vesting certain Atlantic Assets shares. Tell us, if you know, did there come a time when the 500 Atlantic Assets shares offered to Gustav were vested by the American Government? A. Yes.

Q. Where were those shares held at the time of vesting? A. At the Edmund Wagenknecht's Maatschappij Amsterdam.

Q. Whose shares were they at the time of vesting? A. My property - the 500 shares of Gustav Stinnes.

Tr 56 Q. Mrs. Stinnes, after you deposited your 500,000 Hugo Stinnes Corporation shares in the United Trading Corporation, did you have any connection with the Hugo Stinnes Corporation either as an officer or as a director? A. I had become a member of the board.

Q. Tell us, if you can recall, when you first became a member of the board? A. This must have been 1926 or 1927, I do not know it exactly.

Q. Tell us when did you cease to serve as a director or member of the board of directors? A. In the year 1942.

Q. And why did you cease to serve as a director? A. Because the Hugo Stinnes Corporation with all that I possessed which I had handed over to them as property, had been confiscated by the American Government with the outbreak of the war.

Q. Mrs. Stinnes, did any other members of your family serve as officers or directors? A. Yes, my son Hugo was President of the Hugo

Stinnes Corporation and my son Otto was also a member of the board of the Company

Q. Tell us Mrs. Stinnes, how did it happen that you and other members of your family, your son Hugo and Otto, were made officers and directors of the Hugo Stinnes Corporation? A On the basis of our large participation with the Hugo Stinnes Corporation

Q. Do you refer to the participation which was then in the United Trading, later Atlantic Assets Corporation? A. Yes

Q. Mrs. Stinnes, who caused those shares that were in the United Trading Corporation and later the Atlantic Assets Corporation to be voted in favor of those directorships? A. That was self-understood

Tr 57 Q. Who caused the Hugo Stinnes Corporation shares in Atlantic Assets to be voted as you have indicated? A. In my authority my son Hugo.

Q. When you and other members of your family served as directors and officers of the Hugo Stinnes Corporation, whose interests did you represent? A My own interests and those of the Corporation

Q. Mrs. Stinnes, did you, or anyone acting for you, ever purchase any notes of the Hugo Stinnes Corporation or any debentures of the Hugo Stinnes Industries Inc ? A Yes

Q. Were any of such notes and debentures purchased by any of the companies owned directly or indirectly by you? A Yes.

Q. How did you know that? A Because my son informed me about it

Q. Did you own any of such notes and debentures which were vested by the United States Government? A. Those which I caused to be bought

Q Mrs Stinnes, did you or anyone acting for you ever purchase any of the shares of the Hugo Stinnes Corporation? A. Yes, this too

Q. Were any of such shares purchased by any of the companies owned directly or indirectly by you? A Yes.

Tr 58 Q Did you own any shares of the Hugo Stinnes Corporation which

were vested by the American Government, but which were not included in the original 500,000 shares which you received? A. I believe this for certain.

Q. Mrs. Stinnes, I hand you a copy of a document marked for identification as Petitioner's Exhibit Number 12 and I ask you whether that document has been executed by you? A. This is the last claim which I submitted.

Q. Is it signed by you? A. I think so - yes, it is my handwriting.

Q. Has it been filed with the Office of Alien Property in Washington? A. Yes.

Q. Have you filed any other claims with the Office of Alien Property in Washington? A. These were the last claims which I submitted.

Q. But before your last claim had you filed any others? A. I had submitted a claim once before.

Q. Did that claim, which you submitted once before, include all of the property presently claimed in the document which I have just handed to you, Petitioner's Exhibit Number 12? A. No, this is more comprehensive.

Q. Mrs. Stinnes, did you ever file any tax forms which were supposed to set out all of your foreign holdings? A. No.

Q. Mrs. Stinnes, did anyone ever fill out for you and file with the Allied Occupation Authorities any documents which required that all of your foreign holdings be shown? A. I cannot say that.

Tr 59 Q. Mrs. Stinnes, do the German tax forms require that the foreign holdings of the person be shown? A. Insofar as they are located in Germany.

Q. Mrs. Stinnes, do the tax returns which have been filed on your behalf with the German authorities, show you to be the owner of the property which you have claimed in this document, Petitioner's Exhibit Number 12, which I have just shown you? A. I have filed this document, Petitioner's Exhibit Number 12, in the meantime with the German authorities.

Q. But did your former tax declarations set out this property? A. No.

Q. Do I understand that you have now told the German tax authorities about your foreign holdings? A Yes

Q. Mrs Stinnes, why after concealing this fact from the German authorities all these years, did you decide that you should claim this property in the United States and that you should acquaint your Government with the fact that you had withheld this information? A. This question cannot be answered with two sentences In order to make it clear in all details I could perhaps speak for two hours It was in April 1924, after my husband had died when I took over as his heir I was confronted with things that had already been done everywhere I endeavored to continue to the best of my strength, acting the same way he did and to use the same paths that he had made uninterruptedly With reference to the foreign values which were camouflaged I was forced to leave everything the same way and also where things developed further to act according to his intentions In addition the economic condition became more and more difficult in Germany I only wish to refer to the time of the inflation, to the reconstruction, to the difficulties with foreign currency, to the Nazi time during which foreign currency control regulations became still stricter Then followed the war of a many years which ended with the collapse of Germany and was followed by the time of occupation after
Tr 60 the collapse. We were left with only a small rest of the former large fortune, the Hugo Stinnes o H in Muelheim Now there was the task to take all strength together and to build up on this small basis wherever there was an opportunity This soon led to great differences between my son Otto and myself on one side and my son Hugo on the other side I do not want to impose on you because this does not refer to the matter itself, what fights that happened in those two to three years and which ended with a complete break with my son Hugo who had been my collaborator for 25 years It was a terrible day Later on, when I had to reflect what had to be done I had the idea that above all I should examine the entire events of the last two decades This idea was in particular thrown upon me because my son Hugo - and that was the reason

for the break - would not understand that in a true partnership as the Hugo Stinnes o. H. represented, he could not be the only master or dictator, but could only act in unanimity with his partners. The final result of all my considerations was in the end the conviction that in the years past, when I had acted in blind confidence to my son Hugo and had followed him, I must have acted wrongly many times. Furthermore, the idea pressed itself upon me that in view of my age I should, above all, create a clear situation in particular regarding the foreign property, so that not one day perhaps my son Hugo would retain something while my other children would remain with more or less nothing. The justice toward my other children required from me, come what may, not to think of anything else but to consider it my most important task to submit this claim in the end. Then at least, if I should die one of these days, I could close my eyes with a clear conscience and in the feeling that I had done everything for those of my children who stood with me that I had been able to. I do not know whether I will ever receive back from the Americans my property. I hope so, but I do not know it. Certainly I will not be able to live to that day. But now I have a clear conscience and this is the most valuable thing a person can have. I can say no more to this question.

Q. Mrs. Stinnes, you have testified that shortly after your husband's death you gave your son Hugo your Power of Attorney and that you have relied heavily upon him and his advice in the management of your foreign holdings. Does your son Hugo still have your Power of Attorney?

Tr 61 By Mr. Albrecht:

I think you should rephrase your question. I must object to your characterization of the advice that Hugo gave and that it referred to her foreign holdings. I do not recollect that the witness has testified to that effect.

By Mr. Mann:

I think the record is clear concerning the witness' testimony. Mrs. Stinnes, you may answer.

By Mr. Albrecht:

And my objection stands

A. No.

Q. Mrs. Stinnes, I hand you a document marked for identification as Petitioner's Exhibit Number 13 and I ask you to tell me what it is. Let the record show that the translation has been marked Petitioner's Exhibit Number 13a

By Mr. Albrecht:

I object to the introduction of this document on the ground that no proper foundation has been laid for it

By Mr. Mann:

I believe that no foundation is required for me to ask the petitioner what the document is. And I believe that her testimony will show that she is able to testify concerning this document from her own personal knowledge. Mrs. Stinnes, you may answer

By Mr. Albrecht:

Mr. Mann, you are seeking to introduce into evidence a letter written by the Petitioner to her son So far as I know, as no foundation has been laid for its introduction, this is merely a self serving declaration and I object to its introduction as an exhibit

Tr 62 Q. Mrs. Stinnes, you may answer. A This is a copy of a document with which I confirmed in July 1945 the annulment of his Power of Attorney

Q. Mrs Stinnes, would you look at the date again? A. July 1950

Q. Thank you. Mrs Stinnes, tell us if you know whose are the initials on Petitioner's Exhibit Number 13? A. These are my initials whereby I sign everything - Claere Hugo Stinnes

Q Mrs. Stinnes, you state that this is a copy of a letter to your son Hugo Did you direct that this copy be made? A. As I mentioned, on the day of the dispute I withdrew the Power of Attorney orally.

Q Mrs Stinnes, my question is: did you direct that the typewritten copy of your letter to Hugo Jr be made? A I think my secretary, my daughter Else, had made out this copy. Such intimate correspondence was always done by my daughter Else

Q. Tell us, if you know, when did your daughter Else make the copy? A. It is hard to tell, it looks like July 13.

Q. Mrs. Stinnes, was the original of this letter, Petitioner's Exhibit Number 13, typewritten or in handwriting? A No, no. I think as it was the habit, it was handwritten - I believe so, but I cannot swear to it.

Q. Mrs. Stinnes, tell us, if you know, was this copy made before the original was mailed? A I believe this to be impossible. I do not know it My daughter first had to copy it.

Tr 63 Q. My question was: was the typewritten copy made before the handwritten original was mailed - posted? A I think this, of course, to be the case.

Q. Did you compare the copy to see that it was a true copy of the original? A Yes of course, this is proved by my initials

Q. Mrs Stinnes, where is the original of Petitioner's Exhibit Number 13? A My son Hugo must have it

Q Mrs. Stinnes, have you at any time since the date of Petitioner's Exhibit Number 13 given your son Hugo a Power of Attorney or any other authority to act for you? A No, not one!

Q Mrs Stinnes, I direct your attention again to Petitioner's Exhibit Number 12 and I ask you whether that claim has claimed any property which you now know is not yours?

No answer by the witness.

Q Mrs Stinnes, what I want to know is whether you have claimed any property from the American Government which you now know is not yours? A Yes I know it, in the new claim

Q Can you tell us what that property is? A. Yes, these are the two blocks of each 500 Atlantic Assets shares which at the time I had handed, according to the aforementioned arrangement, to my nephew Hans Heinz Stinnes and my sister-in-law Annie Fischer Stinnes on the other hand.

Tr 64 Cross Examination by Mr. Wieferich

Q. Mrs Stinnes, did you have any communication with your brother Don Edmundo at any time after the outbreak of war in 1939?, A. I do not remember any letter

Q. Did you have any occasion to talk to him personally? A. After he had gone to Mexico, no.

Q. Did anyone on your behalf, after the outbreak of war in 1939, have occasion to confer with Don Edmundo? A After the outbreak of war, no.

Q. After the war, and until his death in 1946, did you have any occasion either directly or indirectly to get in touch with Don Edmundo? A. Unfortunately no.

Q. Do you know if your son Hugo was able to remain in communication with Don Edmundo during the war? A. I cannot judge this.

Q. Did you have occasion after the war to get in touch with Don Edmundo's widow Elsa Wagenknecht? A Yes

Q. Can you tell me upon what occasion this occured? A. As far as I can recollect my sister-in-law came for the first time to Germany in the year 1949, together with her foster son Alfred who accompanied her. At that time I invited her once to Buehler Hoehe in the Black Forest

Q. And did you see her there? A. Yes she stayed with me then for about eight to ten days - I do not quite remember

Tr 65 Q. Were any members of your family there, such as Hugo or Otto? A. No, my daughter Else who is always accompanying me.

Q. Did you know at this time whether Mrs. Wagenknecht had filed claims for vested property with the United States? A Yes, this has been told to me

Q. What I want to find out is whether you had been told of that before that meeting or had learned of Elsa's claims more recently? A No.

Q So on that occasion I take it you had no discussion with Mrs. Wagenknecht of claims against the United States? A While she was with me at Buehler Hoehe?

Q While they were in the Black Forest. A One day, when we took a walk together only with my daughter, I put the following question to her on purpose, when we had a possibility to sit down somewhere: "Elsa, can I rely on you in every way?" She understood me immediately and answered: "Of course, you can absolutely rely on me" and she added "I shall never forget what my husband and I owe your husband and you for all you have done for us."

Q Would you explain what you meant by relying on her in every way? A That she was aware and remained aware of her position as a trustee for me in succession of her husband in the same way as he intended it.

Q And would you describe briefly what property you are talking about when you say a trusteeship for you -- trustee of what? A In this case I only meant my 50% property of the Giesemann coffee plantations.

Tr 66

Q Now did you have subsequent meetings with Mrs. Wagenknecht to the one you have described in 1949? A I expressly went to Mexico in 1952 in order to speak to my sister-in-law. Before that I informed her of my arrival and she told me that she had to go to Buenos Aires to do some business there. As far as I can remember I accordingly put off my trip to Mexico saying to myself: some weeks later do not matter for me and then Elsa probably will be back to Mexico.

Q Well, did you see her at all thereafter? A I succeeded only on the evening before flying back to see her, and I could not wait any longer after having been in Mexico for three weeks to corner Elsa without any witnesses, as I must say today, because in the meantime rumours had reached me from several sides that my sister-in-law had gone false ways or had received false advice. When I finally was able to talk to her it was late in the evening, certainly after 10 o'clock, and of course at this opportunity I spoke out very plainly and said very openly what I wanted to tell her.

Q What was the substance of what you said to her? A I drew her attention in every form to the fact that as trustee for the finkas, in

succession of her husband, she could do or not do what she wanted. I could not give her any orders in this respect However, I felt obliged to warn her in all seriousness to act in the way as I had found out it in Mexico, and to act with the money which she received via the fincas, respectively to throw it away the way she was about to do it, then she would very soon not possess anything again. As most substantial point, however, I said: "Are you not at all aware that you are acting in full opposition to your husband? He would never be in agreement with your actions. You are sinning against the confidence with which he entrusted you when he designated you as his heir at the spot as he could not have done otherwise, and you are doing a crime to his memory.

Adjourned at 5:30 P M September 3, 1955, Mr. Wieferich Continuing the Cross Examination on September 5, 1955 at 3:00 P.M

Q. Mrs. Stinnes, these finkas which you have been describing that you talked to Elsa Wagenknecht about in Mexico in 1951, are they the same which you have previously described in the record as being owned by Giesemann and yourself? A Yes

Tr 67 Q. And at this time in 1951 were they still owned by Giesemann and yourself 50 to 50? A Yes, 50% by Giesemann and by my sister-in-law as trustee also 50%

Q. You mean trustee for yourself? A. Yes, as successor of her husband, my brother

Q. Whatever happened to your interest in the finkas, do you still have it? A It continues in the same way as I have just said before.

Q. You mean that your sister-in-law Elsa Wagenknecht is a trustee for you of 50% of the finka? A As to my knowledge she must be

Q. And does Giesemann still own the other 50%? A As far as I know, yes.

Q. Did you meet with Mrs Wagenknecht at any time after the meeting in Mexico that you have described? A No

Q. Now, Mrs Stinnes do you recall that in 1948 you filed your

first claim for vested property with the Office of Alien Property in the United States? A Yes

Q. And do you recall that at that time your claim was for 1500 shares of Atlantic Assets capital stock and 1050 shares of Hugo Stinnes Corporation stock? A No, I always possessed 400,000 shares of Corporation.

Tr 68 Q. Do you recall what your first claim in 1948 in the United States was for, Mrs. Stinnes? A. I cannot say this in detail, seven years have passed since I have not seen it since that time.

Q. Upon whose advice, or with whose help did you make out that claim? A That was in the year 1948 - I followed to a large extent still the advice of my son Hugo

Q Well, Mrs Stinnes, referring to your last claim, which is Petitioner's Exhibit Number 12 for the record, you know now, do you not, that Mrs. Wagenknecht is claiming a great deal of the same property? A I learned this a short time ago.

Q You mean you did not know about Mrs. Wagenknecht's claims in the United States until very recently? A No word

Q. Well, did your son Hugo before you filed this claim and while he was still representing you, ever tell you how he expected to get the vested property back from the United States if at all? A You mean the first claim?

Q. No, I mean before Petitioner's Exhibit Number 12, the second claim was filed? A. At that time he did not represent me any more.

Q During the time when Hugo represented you, did he ever discuss with you the vested property in the United States which had been vested as your property? A As far as I can remember no

Q Did you have any discussions concerning this property with Mr. von Linsingen at any time? A Never

Tr 69 Q Well, after the war and before you filed this Petitioner's Exhibit Number 12 this year, during that ten years what was your understanding as to recovering your property at all from the United States? A By filing a relevant claim

Q Well, you understood did you not, that your first claim in 1948 did not claim all of the property which your second claim in 1955 has claimed? A Yes

Q So for the ten years before your second claim was filed, was there any understanding as to how you would get back the property which was not in your first claim but which is now in your second claim? A I did not give the matter much thought in detail regarding this because I knew that first of all in the United States other laws would have to be issued in order to create a basis for the return of enemy property

Q Well, I take it that before you revoked the Power of Attorney your son Hugo handled this for you, is that right? A Everything that has been before 1950 certainly

Q And after 1950, who has handled it for you? A My son Otto gave me advice - he had my Power of Attorney

Q Can you tell me how often you have seen Mr von Linsingen since the war? A No, I cannot say how often I met him sometime at my sister's where he had taken up residence in a castle on the Rhine.

Q Which sister was this Mrs Stinnes? A I have only one
Tr 70 sister, Nora Wagenknecht Dunlop She is now Nora Hermann Wagenknecht, not Dunlop any more

Q Do you recall at which year Mr von Linsingen lived at that residence? A As far as I remember from 1945 until he went to Basel

Q Do you recall approximately how long that was? A I cannot say it for sure, it may be around 1950 but I cannot say it with certainty

Q Do you know if he was employed by any member of the Stinnes family during that period? A I do not know this for certain

Q Did you have any discussions with him about Edmund Wagenknecht's Handelmaatschappij in Amsterdam? A After he had left the Heimburg - that was the name of the castle - no

Q Well how about before, during the 3 years he was there? A At that time we also mentioned the Edmund Wagenknecht's Handelmaatschappij from time to time in a general way, but at that time he had left the Edwagmij already

Q Did you inform him at any time that you claimed the ownership of this Company Edmund Wagenknecht's Handelsmaatschappij?

A Until his withdrawal from the Edmund Wagenknecht's Handelmaatschappij he knew that I was the owner of this firm.

Q Did he ever tell you that he believed Mrs. Wagenknecht was the owner of Edmund Wagenknecht's Maatschappij? A. The name was never mentioned at all in our conversations.

Q Did he give you any report after the war on the status of Edmund Wagenknecht's Maatschappij? A. No.

Tr 71 Q. What was his employment as you understood it in the period when he was living at your sister's house for five years? A. He had no employment as far as I know.

Q Do you know where he derived his income from during those years? A. No, I do not know this, I was not able to ask him regarding this.

Q I believe you testified on direct examination that Karl Axel Soederstroem is your son-in-law, is that right? A. Yes.

Q And he lives at Asa, Sweden? A. Not any more today, the estate has been confiscated. He has today a new residence and lives in Stora Valla, Bjoernlunda.

Q. Well, I will show you Supplement B to your Notice of Claim, identified in this record as Petitioner's Exhibit Number 12 and ask you if that refreshes your memory about having made certain visits to Asa during the war?

By Mr. Mann

I do not think her memory needs refreshing because she has not yet testified that she did not.

A Yes, I have been there often during the war.

By Mr. Wieferich

I will withdraw that part about refreshing her memory. I think the objection is well taken.

Q Mrs. Stinnes, your testimony is then that you were at Asa

frequently during the war, is that right? A. Yes

Tr 72 Q. Did you see Mr. Soederstroem on these visits? A. Yes of course, he was the host

Q. Did you have any occasion to discuss with him your property in the United States? A. I never did so as far as I remember.

Q. Did you have any occasion to discuss with him your brother Edmund Wagenknecht? A. We talked often about him because he had lived in Asa for several years.

Q. Did Mr. Soederstroem ever mention to you whether he possessed certain notes of Hugo Stinnes Corporation at this time? A. No.

Q. Did Mr. Soederstroem ever tell you that he was acting as trustee for your brother Edmund Wagenknecht in any way? A. No, never.

Q. How long had Edmund Wagenknecht lived at Asa - for how many years? A. To my memory certainly until 1937/38 and I think he came there in 1933.

Q. Did Mr. Soederstroem ever state whether he received any communications from your brother Don Edmundo during the war? A. No. I must correct myself - I do not know, this could only have been family letters.

Q. Did your son Hugo ever accompany you to Asa? A. Accompany, no. We were together once, I do not remember any more the year. Other-

Tr 73 wise I was never together with my son Hugo in Asa.

Q. Do you know if your son Hugo went up there during the war at all? A. I really do not know.

Q. Mrs. Stinnes, let me ask you a few questions about your family background. A. Please.

Q. I believe you testified your father and mother returned to Germany in 1885, is that right? A. 1885.

Q. Can you tell me whether they remained here in Germany or did they return to South America thereafter? A. They remained in Germany.

Q. And did you reside with them until your marriage in 1895?

A. Yes, my marriage took place in the house of my parents.

Q. Can you tell me the address of the residence for the record?

A. Wiesbaden, Bierstetterstrasse 24.

Q. Was that your father's residence until he died? A. Yes, he had bought that property.

Q. Did he retain a residence of any sort in Uruguay? A. No.

Q. Did he have any other residence than the one in Wiesbaden?

A. No.

Tr 74 Q. Do you know where your father's will was filed here in Germany? A. I cannot say this. Probably it was filed in the County Court At Wiesbaden - I do not know this any more.

Q. And would that be true of your mother's will as well?

A. This was a joint will.

Q. After your marriage, where was your principal home here in Germany, Mrs. Stinnes? A. Always here in Muelheim-Ruhr.

Q. Do you have any homes other than the one in Muelheim-Ruhr, Mrs. Stinnes? A. Yes, my husband, respectively we, had a residence in Berlin and then we had taken a residence on one of the estates in Silesia. Until his death also in Wiesbaden in my parents' house.

Q. Now, except for the trips which you have listed on the last page of Petitioner's Exhibit Number 12, your claim, was your residence in Germany, in Muelheim-Ruhr, during the World War II? A. In Muelheim-Ruhr until I lost my house through an air raid in 1943.

Q. And thereafter where was it - after 1943? A. Then I permanently resided in the country, in Silesia, until I had to undertake to flee from the Russians.

Q. On the trips which you have listed to Sweden in Petitioner's Exhibit Number 12, what sort of passport did you have, Mrs. Stinnes? A. Before the war I normally had a German passport. After the war I had my Uruguayan passport, otherwise I could not have gone to Sweden.

Tr 75 Q. My question is, Mrs. Stinnes, what sort of passport did you have during the war on the trips listed to Sweden? A. I believe the German passport.

Q. Well, am I correct, did you get the Uruguayan passport for the first time after the war? A I believe yes, I cannot say it for sure.

Q. What was the reason for that, Mrs. Stinnes? A. For instance it was entirely impossible to get to my children with a German passport - the German Government prevented the exit; and for general reasons.

Q. Were you advised by anyone that possession of an Uruguayan passport would aid in the recovery of your vested property in the United States? A. One said so that this perhaps would alleviate matters.

Q. Who said so? A This I really cannot say - several gentlemen advised me so

Q. Mrs. Stinnes, I want to ask you some questions now about Don Edmundo Wagenknecht, your brother. A. Yes please.

Q. When he was at Asa, Sweden, in the 1930ieth, did he visit you in Germany very often? A. No.

Q. Did you see him up there very often during that period? A. Sometimes I was in Asa, since I had to be there. I had furnished a house there for him and his wife.

Q. Whose furniture was in the house, Mrs Stinnes? A. At Asa?

Tr 76 Q. Yes? A All my furniture.

Q. Did Don Edmundo pay any rent for the house to you, Mrs. Stinnes? A. No, this was out of the question.

Q. Who made the arrangements for him to come to Asa in the first place, Mrs. Stinnes? A I do not know whether he first came to Asa Maybe he was first in Germany, I do not remember exactly In any case, I offered him to take residence in Asa together with his wife and he accepted this gladly

Q Why did you make this offer to him Mrs. Stinnes? A What should he have done, since he came to Germany as a man without any means.

Q Am I correct that this was about 1932 or 1933, Mrs. Stinnes? A. Probably 1933

Q Well, did you talk to him directly about his financial condition

at that time? A. One tries to avoid this if a person lives in such sad circumstances.

Q. Well, will you explain just what the circumstances were that led you to conclude that he was without means? A. He had lost his last fortune in Buenos Aires before he came to Europe.

Q. How did you know that, did he tell you that? A. This was also a consequence of the crisis which we ourselves in our firm were undergoing in the year 1925, and as a result our firm in Buenos Aires was sold in its different parts and thus he had lost employment. He then first tried to form a new firm on the La Plata but had no luck and thereby lost the last means he possessed.

Tr 77 Q. Had this happened before or after your trip to Buenos Aires? A. This happened soon after our visit in Buenos Aires.

Q. Now, while Don Edmundo was at Asa, Sweden, did he have employment of any kind? A. To my knowledge no.

Q. Am I correct that his income consisted of moneys given him by members of your family? A. Yes.

Q. Can you describe what led to his going to Mexico at the end of his stay in Asa? Did you confer with him about this? A. Yes, we believed to find a new field of activity for him for which his personality was well suited and for which his knowledge of the Spanish language would qualify him.

Q. When you say "we believed," Mrs. Stinnes, would you name the persons you have in mind? A. My intimate family, my sons and myself.

Q. You mean you discussed it with Otto and Hugo? A. I believe with both, I do not know it. Both of them fully agreed with it.

Q. Who actually made the arrangements with Don Edmundo? A. Maybe my son Hugo had done this. I cannot say it. I did not usually concern myself with such details.

Q. Did you see him before he went to Mexico? A. Yes, of course, he bade farewell.

Tr 78 Q Did you have any discussion with him at this time about his financial condition? A There was nothing to be discussed For us he was a man without means whom we endeavored to assist

Q Well now Elsa Wagenknecht now claims that at this time Don Edmundo owned all of Edmund Wagenknecht's Maatschappij Can that be true from what you know of his financial condition? A No, then she claims something which is not according to the truth.

Q Mrs Wagenknecht also claims that at this time your brother Don Edmundo owned about $600,000 in debentures and notes of the American Stinnes Corporations. Do you believe that this is true in view of your knowledge of his financial condition? A If I should say what I think about such a statement, then I can only say this is a pure lie

Q And would your answer be the same, Mrs Stinnes, if I told you that Mrs Wagenknecht in addition claims that she owned the majority of Atlantic Assets Corporation as the heir of Don Edmundo? A It would be exactly the same answer

Q Now Mrs. Stinnes, I would like to go back to your visit in Buenos Aires in 1929 can you tell me who accompanied you on this trip? A. My son Otto and my daughter Else

Q And the conversations which you described as leading to a settlement agreement who was present at those conversations? A My son Otto

Tr 79 Q Were you present? A. In the conversations between my brother and my son Otto not - I did not think this was necessary The agreement for the settlement had been worked out by my son Hugo and my son Otto with my consent.

Q What I want to find out Mrs Stinnes, is whether there was ever an agreement in writing which you entered into with Don Edmundo at that time? A Yes, this was all laid down in writing

Q And who was this signed by, this writing, if anyone? A Yes, we went abroad so that this could be signed by my brother Edmund

Q And did he sign it? A He signed it

Q. And do you know where a copy of that document is today?

A. I have no idea.

Q. Did your brother keep a copy? A. I suppose so.

Q. Was this settlement, or agreement, confined to the claims arising out of your mother's estate? A. I do not understand this question because there existed no claims.

Q. Well, the revaluation which you described as having been made with respect to your own family, your brother and sister, is what I mean. Was that settled at this conference in Buenos Aires? A. I would never call it a revaluation. This was a free agreement for pure loyalty which we, respectively I, offered to my brother and my sister. There never existed any obligation of any legal nature.

Tr 80 Q. Did Don Edmundo undertake to pay you anything under the terms of this agreement? A. Pay - Don Edmundo did not pay anything. Don Edmundo gave with our consent only his name. This was done for tax reasons vis-a-vis Germany. My brother one part, my sister one part, and myself three parts, because three parts of the family had already been paid off through me before, respectively; I believe one part through my husband.

Q. And were the payments made through Edmund Wagenknecht's Maatschappij? A. Yes.

Q. And was the purpose of making such payments through Edmund Wagenknecht's Maatschappij so that the money could be tax free?

A. Yes, otherwise they could not have done it.

Q. And what members of your family are familiar with this agreement, will you name them? A. My son Otto and my son Hugo, since he had undertaken this agreement together with my son Otto.

Q. How about your eldest son Edmund Stinnes who was in the United States. Was he familiar with this agreement? A. I do not think so, I do not know it. In 1929 I was separated from my son for several years and in the beginning did not hear from him. I cannot say, I do not believe that he knew about it.

Q How about your sister, she must have known about the agreement? A She had the benefit of it later on, so far, of course, she must have known about it

Q Mr von Linsingen was not present at this conference at Buenos Aires, I take it? A No, the Edmund Wagenknecht's Maatschappij was informed by letter from Buenos Aires

Tr 81 Q Now, I want to change to the other agreement concerning the estate of your mother-in-law. You recall you testified about making an arrangement whereby 500 Atlantic Assets shares were given to Hans Heinrich Stinnes and Annie Fischer and, I believe, offered to Gustav Stinnes Do you recall that? A Yes

Q Where were the discussions held which led to those transactions? A The agreements with my mother-in-law were still led by my husband

Q Mrs Stinnes, I mean later when you arranged to give these Atlantic Assets shares to those three people although you felt they had no claim upon you, where were those discussions held? A This was much later, I misunderstood this I cannot say where these were held

Q Was any part of this Atlantic Assets gift from yourself discussed in your conference in Buenos Aires? A. No

Q Did your gift of shares in Atlantic Assets to the two brothers and sister of your husband have anything to do with Don Edmundo Wagenknecht? A. No, not the least

Q Did you have any occasion to discuss this with Don Edmundo? A No, neither

Q Well now, your son Hugo Stinnes has stated under oath in a deposition taken in Elsa Wagenknecht's proceedings against the United States that Don Edmundo was the person who gave your husband's brothers and sister 500 Atlantic Assets shares and that he agreed, Don Edmundo agreed that he would hold you free from the claims of your husband's brothers and sister Can this be true? A I am sorry that my son Hugo

Tr 82 made such statements, they are in opposition to the truth. Because all Atlantic Assets shares, whether with trustees or in the Edmund Wagenknecht's Maatschappij which was also a trustee, were my personal property

Adjourned at 5:30 P. M. September 5, 1955. Mr. Wieterich Continuing the Cross Examination on September 6, 1955 at 3:00 P. M.

Q. Mrs. Stinnes, I show you Petitioner's Exhibit Number 13, which is a letter dated July 18, 1950, from yourself to Hugo Stinnes and I direct your attention to the second paragraph. That paragraph refers to an enclosed handwritten letter, do you see that? A. Should I explain this?

Q. What I want to know, Mrs. Stinnes, is do you have a copy of the enclosed handwritten letter? A. I cannot tell. I must suppose so because I have my daughter copy on the machine nearly all my letters, also those handwritten, as far as they are of any importance.

Q. Mrs. Stinnes, would you have a search made and see if you could produce that letter sometime before we close these meetings? A. I shall instruct my daughter to search for it.

Q. Mrs. Stinnes, I direct your attention to Petitioner's Exhibit Number 7 in this deposition which is a letter dated November 25, 1952 addressed to yourself from Mr. von Linsingen. What I wish to call your attention specifically to, Mrs. Stinnes, is the fourth paragraph of the letter where the English translation reads as follows: "This old proverb is still true and in small wars as in large ones there are, nowadays, only continual defeats and -- almost inevitably -- a third person who effortlessly profits therefrom." Did you see that in the letter? My question is, Mrs. Stinnes, what did you understand by that sentence, who was the third person and what was it about, if you know? A. This refers to the serious disputes which I had at that time with my son Hugo regarding his business activities in the partnership

Tr 83 Q. Well, my only question about that: Mrs. Stinnes, is who did you understand the third person referred to by Mr. von Linsingen who might effortlessly profit, who would that be? A. As usual in such case

any outsider I did not think about this He only wanted to say that neither I nor my son Hugo would be the winner in this dispute.

Q Referring now to Petitioner's Exhibit Number 4, which purports to be an agreement between Mrs Stinnes and Atlantic Assets Corporation, bearing the signature of Mr Rieber, dated October 24, 1930, I call your attention, Mrs Stinnes, to the third paragraph of the agreement referring to the 400,000 shares of Hugo Stinnes Corporation.

A This refers to the option

Q My question is, Mrs Stinnes, as you understood the option which you had to obtain back the 400,000 shares of Hugo Stinnes Corporation, you did not have to pay anything in the form of money, did you?

By Mr Mann

I am not clear at all on that question Would you read back this question to me?

Question re-read

By Mr Mann

I object to the form of the question because the question is inconsistent with the document which has been read

By Mr. Albrecht

I would like to object to the question you have put to the witness on the ground that the Exhibit speaks for itself and her understanding of what the meaning of this document may be is immaterial

By Mr. Wieferich

Both of your objections indicate that we may be talking about
Tr 84 . different things. The witness, I believe, has testified that her real option was not this written option, but an oral option and my question goes as to what her understanding is as to the nature of the option that she actually had.

By Mr Mann

Upon the question being clarified that it is clear to the witness that the question refers to the oral option, I withdraw my objection.

By Mr. Albrecht:

Upon your statement, Mr. Wieferich, I must record the further objection that any line of questioning relating to an alleged oral option is objectionable on the ground that the alleged oral option previously testified to is, of course, void under the Statute of Frauds. I have previously attempted to record my objection on the record and through some mischance I stated my objection to be based on the Parole Evidence Rule. This was, of course, an error

Q. Mrs. Stinnes, to repeat my question. As you understood the actual option you had arising from your oral agreement, did you have to pay anybody any money in order to get back your 400,000 shares of Hugo Stinnes Corporation stock?

By Mr. Albrecht:

My objection extends, of course, to your entire line of questioning on the alleged oral agreement or option.

Q. You may answer, Mrs. Stinnes. A. No, this in the end was an agreement with myself.

Q. What you actually had to give back for your 400,000 shares of Hugo Stinnes Corporation stock after Atlantic Assets Corporation was formed, was 3000 shares of Atlantic Assets Corporation, was it not? A. Yes.

Tr 85 Q. Mrs. Stinnes, I direct your attention now to Petitioner's Exhibit Number 3, concerning the 12 1/2 million dollars Hugo Stinnes Corporation gold notes purporting to be a short form of prospectus. You will notice, Mrs. Stinnes on the last page of that Exhibit there is a paragraph referring to the board of directors which it is proposed to have and I ask you to examine the names which are in that paragraph. My question is, Mrs. Stinnes, one name which appears there is Mr. F. H. Witthoefft, Hamburg, Chairman of the Board of the Commerz and Privat Bank. A. Yes, this was an intimate friend of mine and also of my son Hugo.

Q. On direct examination I believe you testified that there was a Mr. Witthoefft associated with the Hugo Stinnes Limitada. My question is, was that the same man?

By Mr. Mann

I object to the form of the question as I do not believe the witness has so testified

Q Let me ask you as an original question, Mrs. Stinnes, was Mr. Witthoefft associated with the Hugo Stinnes Limitada? A. With the Hugo Stinnes Limitada in Buenos Aires?

Q. Yes? A In the beginning not. In the beginning the property was exclusively property of my husband, but in the crisis in 1925 he took over half of a part of this Corporation as far as it had not been liquidated by sales

Q Calling your attention to the second name in the list of names on Petitioner's Exhibit Number 3, Mr. Franz Bracht, Essen, Vice-Chairman of the Rhine-Westphalia Electric Company, did you know him? A. He was a very intimate friend of mine and after the death of my husband I appointed him guardian for my two youngest children. Notabene Lord Mayor of Essen

Tr 86 Q Mrs Stinnes, I now want to ask you about a number of people and companies the first of whom is your son-in-law Mr. Soederstroem. Did he have, to your knowledge, any employment on behalf of the complex of Stinnes Companies? A No

Q Was he simply the manager of the estate at Asa? A. After he had been trained in agricultural matters on one of our estates for about two years, I had entrusted him with the administration of all our agricultural interests so that I would be free from it. I do not remember exactly

Q. Mrs Stinnes, did you know a gentleman in Sweden by the name of Appelqvist, A. R Appelqvist? A. Yes.

Q Who was he? A He was the manager of the firm of Appelqvist in Stockholm

Q Do you know if he was connected in any way with the various firms which formed the Stinnes complex? A. He was not connected with it

Q. Do you know who owned the firm for which he was manager in Sweden? A. The firm of Appelqvist?

Q. Yes? A. Partly this was Mr. Appelqvist himself as far as I know and on the other hand as far as I know we ourselves.

Q. You mean yourself? A. Yes our firm. We worked very closely together in coal dealing with the firm of Appelqvist.

Tr 87 Q. I believe on direct examination you testified that you knew a Dr. Kurt Brunner, is that right? A. Yes, manager of - I think I also said - the Mira and Fundus Trust Companies.

Q. Am I correct that he managed both two Trust companies for you? A. Yes.

Q. Are you familiar with a Swiss Company called Transatlantica, the full name of which is Transatlantica Societe Commerciale et Financiere? A. In Basel?

Q. I believe it is, yes. A. I have heard the name. It may absolutely be possible that they became the successor of Mira and Fundus.

Q. Did you confer from time to time with Dr. Brunner yourself or did your son Hugo handle these matters for you? A. No, since at that time I had great confidence in my son Hugo, I mostly left it to him.

Q. Mrs. Stinnes, are you familiar with the A. B. Coal and Transport Company of Sweden? A. I have heard the name, but I do not know of the details.

Q. Did you know a Swedish lawyer by the name of Wetter? A. Yes, Sune Wetter.

Q. Do you know if he represented at any time any of your interests in Sweden? A. My interests?

Q. Yes. A. I cannot say that.

Tr 88 Q. Were you familiar with a company in England called Lantica Trading Company? A. I have heard the name, no details. This ca.. probably be the successor firm of our Hugo Stinnes Limited and later Products Company.

Q. Mrs. Stinnes, were you familiar with the Union Trading and Finance Company of Denmark? A. In detail, certainly no - I have heard the name.

Q. Well, I think you testified on direct examination that you knew Dr Schoring, is that right? A Yes, that is correct I have been together with him for hours at the occasion of the marriage of my two sons in Copenhagen

Q Do you know if Dr. Schoring organized the Union Trading and Finance Company? A If I am not mistaken he was, I believe, the manager of the firm since he was the trusted attorney of my friend Albert Jensen

Q. Referring to Mr. Albert Jensen, Mrs. Stinnes, do you recall that you stated on direct examination that he had been a trustee of property for your husband at one time? A Yes he has been, and afterwards also for me.

Q. Do you recall which property he was trustee of for your husband at any time? A. He was trustee for me for a large block of Atlantic Assets shares.

Q. My question is about before 1925, when he was presumably a trustee at some time for your husband, what property was involved, if you know? A. If I have spoken of trusteeship before 1925 I must have misunderstood something. After increasing of shares of Atlantic Assets he then became my trustee

Tr 89 Q. Mrs. Stinnes, I am speaking of when he was, if he was, a trustee for your husband? A. I believe no I think I said this already before, I do not remember, I believe no, before 1925

Q. Mrs Stinnes, you recall testifying before about Eric Will. How old a man was Eric Will when you knew him? A. I got to know him on the occasion of the marriage of my son Hugo to his sister. His sister was then, I believe, about 24 and he, I think, was older than his sister, but I cannot swear to it. He was either two years older or two years younger - more or less two years. I do not know it exactly.

Q Well your husband paid for a part of his education, didn't he? A. As far as I remember yes I have caused my husband to do this because I thought Eric Will to be very intelligent and capable of development, and my husband always liked to give young men the opportunity of education

Q. So that when the time came to enter into the transaction in the United States you could trust Eric Will to represent you, could you not? A. At the time when we entered into the heavy financial crisis in 1925 we, my son Hugo and myself, entrusted Eric Will as our confidential representative in the negotiations in order to obtain the American loan.

Q. Mrs. Stinnes, you testified about your acquaintance with Captain Rieber, do you recall that? A. Yes, of course.

Q. Was it pursuant to your request that he became President of Atlantic Assets Corporation? A. Yes.

Q. Mrs. Stinnes, are you familiar with the Feldmuehle Paper Company? A. Yes, since a long time.

Tr 90 Q. Did you own an interest in that Company? A. Always have possessed it.

Q. And did Mr. Kellermann take a job with that Company after he left the Hugo Stinnes Company in Berlin? A. Yes, to my greatest regret he accepted a position with the Feldmuehle.

Q. Were you familiar at all with the deposit of Feldmuehle shares with Atlantic Assets? A. I do not remember this. I cannot say anything about it.

Q. Mrs. Stinnes, are you familiar with a Company called N. V. International Controla in Holland? A. No. In those years, it must have been ten years or more before 1950, many events occurred about which I did not learn, which also corresponded the wish of my son Hugo who continued to say to me: "It is better for you not to know anything about this or that so that at all times when you should be questioned about it you could raise your finger and say, I do not know anything about it."

Q. Mrs. Stinnes, will you explain for the record what the Hugo Stinnes o. H. is? A Is today?

Q. What it is. A. It has always been a Bank which, after we had been kicked out of the Corporation so to speak and had nothing to do with it directly, with the management of the Corporation, from then on tried to develop further above its former banking activities. This was the only thing which was left to us, respectively to me.

Tr 91 Q. You mean the only thing left within Germany, is that right?

A. Yes, the only asset in Germany, the only basis from which we could create any expansion of our business and our activities and the only basis from which my two sons could re-start their activity. Of course this only referred to Germany

Q. And is this bank wholly owned by you and your family?

A. This Company, the Hugo Stinnes o. H., is a pure partnership and was originally 100% my property Then in 1925 or 1926 I accepted my son Otto as partner and two years later, I think, my son Hugo. I myself always kept in hands by far the largest majority interest of the Company

Cross-Examination by Mr. Albrecht.

By Mr. Albrecht

Before I start my cross-examination Mrs. Stinnes, I would just like to say you, as the attorney for certain adverse parties, I have had occasion to make a study of the facts relating to the situation and according to the information I gleaned, there seems to me to be some differences between it and the statements made by you in response to the questions asked by Mr. Mann and Mr. Wieferich It is now my duty as the attorney for these other parties to direct certain questions to you in order to clarify, if possible, the factual situation. I am afraid that I may have to ask some questions that may prove a little indelicate, or even embarrassing and I hope, Mrs. Stinnes, that you will understand that I am merely trying to discharge my responsibility as an attorney in asking these questions

Q. When your husband died, will you please tell us how old your son Hugo was? A. My son Hugo was 26 1/2 years old.

Q. And your son Edmund? A. 1 1/2 year older

Tr 92 Q. And your son Otto? A. In the year 1924 he was 21 years old.

Q. Was he then already in the business of your husband? A. No, he still attended the University and intended to take his state examination in chemistry

Q. How long did he remain at the University? A. Until the end of 1924. He then passed his state examination with summa cum laude.

Q. Did he then enter the business of his father? A. No, he devoted himself to his education for his future entry into the business of his parents, as a business man.

Q. How long did he devote himself to preparing himself for entering the business of the family? A. I must recapitulate. I think half a year in Germany and then he accepted a position with the firm of Witthoefft in Singapore, devoted also to his further education. He had to bind himself for four years, but after two years he informed his boss in Hamburg he wished to be released from the obligation to stay for four years in Singapore, because he could not learn anything further there.

Q. And when you refer to the firm of Witthoefft, you really mean the firm of Arnold Otto Meier in Hamburg, do you not? A. Yes.

Q. Am I correct then in suggesting that your son Otto probably entered the family firm around 1928? A. Yes, I cannot say it exactly, but this might be correct.

Q. When your husband died, was your son Edmund in the family business? A. Yes, he was a manager of the business in Berlin.

Q. How long had he been active in the business at the death of your husband? A. I cannot say it exactly. He was in the World War I
Tr 93 and voluntarily fought spartakists. I think it was about 1921 perhaps, I cannot say it exactly. No, it was later, I must correct myself. He also attended the University later on because he had to interrupt his studies with the beginning of World War I, since he enlisted immediately as a volunteer and then the Universities made it possible for the students after World War I to pass their examinations quicker than otherwise possible. I think it took him two years to pass his state examinations in chemistry and engineering, also summa cum laude, and then my husband employed him in the firm.

Q. So that he was active in the family business for several years before your husband died? A. This must have been for two years, I really cannot say it exactly.

Q. And how long had your son Hugo been in the family business at the time of Mr. Stinnes' death? A. My son Hugo had practically already been employed by my husband in the firm since his 16th year of age in some kind of a capacity for a special reason, if I may add.

Q. So that he had been approximately 10 years active in the business at the time of your husband's death - more or less? A. Not ten years. I can no longer count. The first years of his activity were purely for education and he had no responsible position, in no way. If I may add something. When he was 16 years old we had to take him away from school since he had suffered a serious scarlet fever and he was afraid that he would not be promoted and his heart started to become weak and this was the only possibility to give him an activity so that he did not feel as an outsider - he suffered extra-ordinarily from this during the First World War.

Q. I am sorry I pressed you on so much detail. The only thing I was trying to bring out was that two of your sons had been in the family business at the time of your husband's death? A. Yes.

Q. So that it became logical upon your husband's death to call upon these two sons to carry on the business, is that not true? A. Yes, I think this is expressed in a correct way.

Tr 94 Q. Now, so far as your sons Otto and Hugo are concerned I assume that in the course of time they both became acquainted with all aspects of the family business, is that not correct? A. Referring to Germany, yes.

Q. I think you have testified that Otto now has your Power of Attorney, is that not correct? A. Yes, since I have taken away the Power of Attorney from Junior in 1950.

Q. And when you say Junior, you are referring to your son Hugo, are you not? A. Yes, he was always called so, my son Hugo.

Q. And you have a copy of that Power of Attorney that you gave your son Otto? A. I suppose so, as a matter of fact.

Q. Will you not be good enough, when you next come to the Consulate to bring a copy of your son Otto's Power of Attorney with you? A. My secretary will take care of this.

Q. Who is Wilhelm Unger. Is he not an employee of the o. H. today? A. Yes, he is the manager of our financial department.

Q. And before you and the other members of your family were thrown out of the G. m. b. H. he was also the manager of the financial department there, was he not? A. Yes.

Q. As a matter of fact the employment of Mr. Unger goes back to the days of your husband, does it not? A. Yes, when he graduated from High School my husband took him into the firm. He had his entire business education in the firm.

Tr 95 Adjourned at 5:30 P. M. September 6 1955, Mr. Albrecht Continuing the Cross Examination on September 8, 1955 at 3:15 P. M.

Q. We were talking about Mr. Unger the last time and I wish you would tell me, if you can, how many years he has been employed by the Stinnes family going back to the days while your husband was still alive. A. I do not know.

Q. For how long was he in the employ while your husband was still alive? A. I neither know this.

Q. Then, to save time, let me tell you that when Mr. Wieferich and I interrogated Mr. Unger two years ago, Mr. Unger stated then that he had been in the Stinnes employ for I believe 41 years or more. Would you say that that is approximately correct? A. I do not know the day when my husband employed Mr. Unger, therefore I cannot give any precise neither no nor yes.

Q. Well, your husband died over 31 years ago? A. Exactly 31 years ago.

Q. Well, then Mr. Unger must have been at least 31 years in the employ of the Stinnes Companies? A. Certainly for 31 years.

Q. So it would not take many years to have been in the employ of your family to bring us to the result of 41 years, is that not so? A. I cannot say more than I have said.

Q. Well now, Mr. Unger, you have stated, was the director of your finance department, did you not? A. After he had completed his education

Tr 96 Q. And you have complete confidence in Mr. Unger? A. Yes.

Q. And you have always had confidence in Mr. Unger? A. In the former years I had no close contact with him.

Q. But since you have had close contact with him he has enjoyed your complete confidence? A. Yes.

Q. And he has complete knowledge of the affairs of Hugo Stinnes o. H.? A. As far as they refer to Germany.

Q. And he has complete knowledge with respect to the partners' accounts in that Company? A. As far as they refer to Germany.

By Mr. Wieferich:

I want the record to show that I do not believe that this witness is competent to testify as to what another person knows and I therefore object to this line of questioning and if it is understood that that objection goes to all such questions I will not repeat the objection.

By Mr. Albrecht:

Well, Mr. Wieferich, Mr. Unger is an employee of this witness and my questions are directed to her as to what she knows of what her employee did in the concern.

By Mr. Wieferich

As to what Mr Unger did I have no objection, but I believe your questions were as to what knowledge he had and on that, I repeat, this witness is not competent to testify.

By Mr. Albrecht:

Tr 97 I cannot, of course, agree with you at all because she certainly is competent to testify with respect to all knowledge he must have had if he performed certain functions.

Q Now, what were Mr. Unger's duties as the finance director of the partnership? A. I do not know this in all details.

Q. Well, he was your employee, was he not? A. Yes.

Q. Well, do you mean to testify that you do not know what your employee did as finance director of the family business? A. I could not know this in all details which also referred to minor matters.

Q. I do not wish to trouble you about telling me what minor matters Mr. Unger did. I would like to know what his principal duties were. Now, if you know those, please tell us? A. To handle the regular banking transactions and to increase the banking business.

Q. And in that connection all book-keeping of the firm was under him, was it not? A. I suppose so.

Q. And it was he, was it not, who prepared all reports to the tax authorities? A. This was done by the financial department for me.

Q. Of which Mr. Unger was director, was he not? A. Yes.

Q. He also prepared the reports that had to be made to the Allied Occupation Officials, did he not? A. Until the year 1950, since I cooperated in blind confidence with him, everything was controlled by my son Hugo.

Tr 98 Q. But I thought you testified that you did so many things in the business through your son Hugo, who had your Power of Attorney? A. To that I must say that at least in the last ten years before 1950 my son Hugo on purpose did not inform me of many matters.

Q. Well, let us forget the period of 10 years before 1950. Let us take the period before then, before 1940. What were the principal things that you had to do in the management of the business? A. Before 1940?

Q. Yes? A. To look after and manage the substantial agricultural interests.

Q. I am glad to have heard that answer, because I think it is correct. It was the agricultural matters of the family business that were your chief concern, is that not so? A. I cannot answer neither with yes or no to this.

Q. Well, let us get back now to Mr. Unger. He knew all about the investments of the family business and of the individual partners, did he not?

By Mr. Wieferich

Let the record show that I repeat my objection to this line of questioning.

By Mr. Mann:

Moreover, let the record show that that is the second time Mr. Albrecht asked that question and that the witness has answered it once.

A. On my personal investments, yes. I was not concerned with the others.

Q. Mr. Unger also had the responsibility for paying such taxes as were payable by the family business and by yourself, did he not?

A. So far as this was within Germany I believe yes.

Tr 99 Q. You mean so far as German taxes were concerned, he would pay all those? A. Yes, so far as my German tax return was concerned.

Q. But my question was broader than that, it concerns your personal taxes and the taxes payable by the business? A. I can only refer to the fact that my son Hugo with my Power of Attorney controlled all these matters and it was not my duty to deal with them.

Q. But wasn't it a practice that when tax returns were prepared for you that they would be submitted to you before they were filed? A. I cannot say it with certainty because I was very often in foreign countries and then they had to be filed without being submitted to me.

Q. But is it not a fact that many of these tax returns, when you were at home and not abroad, were first submitted to you and then you would mark your initials on them? A. I cannot say this.

Q. Mrs. Stinnes. I would like you to look at this document and the --

By Mr. Mann:

Objection. If you wish her to look at a document I suggest that you have it marked for identification.

By Mr. Albrecht:

I really do not care to be interfered with in the manner in which I conduct the cross-examination of the witness. I do not have to mark for identification any document that I do not propose to submit as an

exhibit. I am showing the witness a paper which I have to refresh her recollection so that she may answer correctly.

Tr 100 Q. - and the initials that appear on its side and ask you whether that refreshes your memory and whether you now wish to change your answer. A. When they were submitted to me I initialled them and did not look at them more closely.

Q. Well, then your answer is that you did see some tax returns - and initial them, is it not? A. This was only a matter of formality for me.

Q. Did Mr. Unger have anything to do with the preparation of the reports and financial statements in connection with the settlement of your husband's estate? A. In 1924 I believe we also had another gentleman in the financial department.

Q. Well, then you will not say that he did not have anything to do with the settlement of your husband's estate, will you? A. I want to say that at that time I can neither answer it positively nor negatively.

Q. You have stated that Fundus and Mira were Stinnes Companies. Did Mr. Unger have anything to do with those Companies on behalf of Stinnes? A. This question really has been answered by me by another reply saying that Mr. Unger had not been entrusted with foreign property and transactions.

Q. Well, if there were such foreign transactions, who would be responsible for them? A. My son Hugo, but in complete ignorance of myself.

Q. But where would the records be kept of all these foreign transactions? A. To my knowledge everything with the Edwagmij.

Tr 101 Q. Was that true also of the negotiations in 1926 for a loan to the Stinnes Companies? A. No; not yet at that time.

Q. Well, when did that start?

By Mr. Mann:

Could you clarify that question, Mr. Albrecht, when did what start?

Q. Just tell us, Mrs. Stinnes, at what time, from what time all foreign business transactions, the records with respect to all foreign business transactions were kept by Edwagmij? A. I would have to figure that out, if that is at all possible.

Q. I wish you would give some thought about it, Mrs. Stinnes, because I think it is very important to get these facts in the record. A. I cannot do this within five minutes, after all, I have to make my statements under oath.

Q. Well, I would appreciate it if you would think about this matter and we will come back to it tomorrow. Did your son Otto know about these transactions with Fundus and Mira?

By Mr. Wieferich.

Same objection by me.

A. I ask you to inquire of him. I cannot say anything about it - no more than I have stated already before.

Q. Well, Mrs. Stinnes, I understand that you are the majority owner of the Hugo Stinnes o. H. and your son Otto has a minority interest in it and that, since 1950, he has your Power of Attorney, so that to all intents and purposes he runs the affairs of the partnership. Now, I ask
Tr 102 you as the owner of the major interest in that firm, whether your manager is completely informed with respect to all properties in Germany and elsewhere which you claim belong to the Stinnes Company?

By Mr. Wieferich:

I object to the characterization of the claim as being that these Companies all belong to the Stinnes Company.

A. Yes, to my knowledge.

Q. I take it it would surprise you then, would it not, if Otto denied that his family had any interest in one or the other Companies which you have mentioned? A. Why? I do not know this, he can say that himself.

Q. But Otto is the manager of the business and he should know, should he not, of all the property holdings of the family partnership?

A. I cannot say anything regarding this, this is his matter.

Q. I am very sorry to ask another question on this subject. But

I must insist that it is a matter for your concern because you own the majority of the family partnership. A. I do not know the reasons which caused my son Otto to do this.

Q. But you would say that his statement is wrong, would you not?

By Mr. Mann:

I object to that because it has not been shown which statement we are talking about.

A. Yes.

Q. Otto made a deposition in an action which Mrs. Wagenknecht brought against the American Government and which is known as Civil

Tr 103 Action Number 1734 52 pending in the United States District Court for the District of Columbia. And on July 22, 1953, only two years ago, Mr. Wieferich asked him the question whether there was any business relationship with Fundus in Switzerland and Otto replied, and I quote: "I don't know this firm." What have you to say to that answer?

A. I am not responsible for the statements of my son Otto, I do not know anything about it.

Q. But doesn't your son have your Power of Attorney to act for you in the family business?

By Mr. Mann:

I think she has testified any number of times, Mr. Albrecht, that he does.

By Mr. Albrecht:

Mr. Mann. I do not think your interruptions with my cross-examination are helpful. The witness has made a statement which I would like to question, and I have a right to question it and to ask a question several times if that should appear necessary to me.

A. Yes, he holds it.

Q. In the same law suit pending in Washington, Mr. Unger was interrogated as a witness and Mr. Wieferich asked him who Dr. Brunner was, to which he replied that Dr. Brunner was the proprietor of a smaller bank and that he believed its name to be Fundus of Zuerich. Thereupon Mr. Wieferich asked Mr. Unger whether Stinnes had any business

relations: any business transactions with Fundus, to which Mr. Unger replied: no. What have you to say to that testimony of Mr. Unger, one of your employees?

By Mr. Mann:

I object to this entire line of questioning concerning the workings of a man, of an employee and the answers that that employee may have given. I suggest to Mr. Albrecht that he question Mrs. Stinnes relative to the facts of which she might have knowledge.

By Mr. Albrecht:

Tr 104 Mr. Mann, let me recapitulate for you. The witness has testified that Fundus was a Stinnes concern. Mrs. Stinnes has testified that Mr. Unger is director of finance of the Stinnes Company. In the relations between Stinnes and Fundus the director of finance would appear to play some part. I am not interested in eliciting what may be in Mr. Unger's mind, I am interested in eliciting what Mrs. Stinnes, the owner of the majority interest in the family concern and who, according to her testimony did a great deal of managing in the family concern, I am interested in finding out what she thinks of the answer that I have read that was given by her employee, who should be in a position to know of the relations between Fundus and Stinnes.

A. Mr. Unger is always being described here as a representative of the business transaction of the whole family. Mr. Unger had only, exclusively only, to deal with the finance department of the Hugo Stines o. H. and I believe I have mentioned before, I have replied, that he did not know anything of all foreign business transactions or participations or property of the family. I believe also to be justified to add that the questions regarding Mr. Unger have nothing at all to do with the complex about which we are talking here.

Q. I hope gradually to be able to show you that it has a good deal to do with the complex we are discussing here. In Mr. Unger's examination to which I have eluded, Mr Wieferich specifically asked him whether in connection with his duties as director of finance of Hugo Stinnes o. H. he also took care of the financial matters relating to the individual

partners of the same, and Mr. Unger gave the following answer: "Yes, the payments which the partners had to make of their household expenses, the purchase of securities; the payment of taxes and the control of their accounts with Hugo Stinnes o. H. and other banks, also all matters relating to the taxes payable by the members, because all figures relating to taxes were given by me to the tax department that handled all tax matters for all the Companies. The man in charge of that tax department, a s well as of the legal division, was a gentleman named Dr. Soeller. Together with Dr. Soeller I disposed of all tax matters although I have previously stated all figures in connection with the same were supplied by me." Now, that is the information I had hoped to get from you and I now ask you whether that statement is accurate?

Tr 105 A. This entire statement by Mr. Unger only confirms what I have answered to your last question that the matter Hugo Stinnes o. H. and family has nothing to do at all with the complex with whichwe are dealing here.

Q. Well, whether that is so or not, will you please answer my question. A. Mr. Unger stated that my tax affairs and those of the other partners were dealt with by him together with the tax department - that is correct.

Q. But Mrs. Stinnes, we can dispose of this matter very quickly. You see my question did not relate merely to tax matters. Mr. Unger stated all his functions as director of finance. Now I have asked you whether that statement is correct. Will you not please either say yes or no? A. I cannot do that because I do not know. I read from this, that this only refers to tax matters. If the concept which Mr. Unger states also refers to other matters, that is something else which I do not know, then I cannot say anything else.

Q. I believe I am able to say that you can answer my question by either yes or no. And may I not suggest that you consult with Mr. Mann as to whether you cannot do so?

By Mr. Mann:

I am afraid I cannot testify as to what the witness' knowledge of the situation might be.

By Mr. Albrecht:

Mr. Mann, I am only asking you to support me in telling your client that I am entitled to a yes or no answer to my question and I wish you would instruct your client accordingly.

By Mr. Mann:

I will only tell my client to answer this question to the best of her ability and only insofar as she has personal knowledge.

Tr 106

Adjourned at 5:30 P.M. September 8, 1955. Mr. Albrecht Continuing the Cross Examination on September 9, 1955 at 3:00 P.M.

Q. We will leave the subject of Mr. Unger for the present and I shall come back to it later again. I shall now ask you whether you know Dr. Soeller? A. Yes.

Q. He was in the employ, was he not, of the Stinnes family? A. Yes.

Q. And what position did he occupy? A. He was head of the legal department.

Q. Both of Hugo Stinnes o. H. and Hugo Stinnes B. m. b. H. ? A. Of the Hugo Stinnes G. m. b. H.

Q. Did he occupy any position in the family partnership? A. He withdrew shortly after the collapse. I do not exactly know the year, 1947 I believe.

Q. Do you mean he withdrew from the family partnership at that time? A. From the family corporation - I am recollecting. He withdrew in 1947 or 1948 and after 1948 then we had nothing to do any more with the G. m. b. H.

Q. The only thing that I wanted to bring out was that he did have charge of legal matters affecting the o. H. as well as the G. m. b. H., did he not? A. As long as we had the G. m. b. H. under our management, yes, according to my knowledge.

Q. Can you recollect for how long he was in the employ of the Stinnes family? A. No, I cannot say that.

Tr 107 Q. Did his employment start in your husband's time? A. I do not know the exact date of his entry. At the time of my husband he was, I believe, Assistant of his uncle who had the General Power of Attorney of my husband. I cannot give any dates for this.

Q. Can you tell us where Dr. Soeller is today? A. As far as I know he is a private man and has his own law business.

Q. In Essen? A. No, in Muelheim.

By Mr. Albrecht:

I now wish to take up Petitioner's Exhibit Number 1 and I wish to state for the record that I have been somewhat puzzled by the photostat that has been submitted. I find, for example, that there is no numbered paragraph 8 in the copy that I possess. Nevertheless, the pages appear to be in number seriatim. Furthermore, when one passes from page 7 to page 8 there does not appear to be a continuity of thought. I also notice that while both paragraphs are numbered, there is no general part labelled with the roman numeral I and yet the top of page 8, which starts in the middle of a sentence, bears the roman numeral II together with the legend: Muelheim Ruhr 1. Maerz 1924. This may of course have been one of the difficulties occasioned by photostating a document in the files of the court. It is, however, a descrepancy which it would appear to me to be necessary to clear up for the record. I would also like to ask you, Mr. Mann, whether it is the intention of the petitioner to submit a certified translation of this document for the record.

By Mr. Mann:

We intend to furnish a translation of the will. We have not furnished certified translations in the case of the other documents. We intend to follow the procedure followed heretofore and submit a translation which of course you may examine for accuracy. With regard to the peculiarities of the will which you have noted I call your attention to the fact that we have shown you a certified copy of the will. I believe there can be no discrepancy between the photostat and the certified copy which you have seen. I am informed that an examination of the original will on file in the Muelheim County Court discloses that the original will is a holographic

Tr 108 will consisting of two sheets. The first sheet is signed at the end by Hugo Stinnes in the middle of a sentence which undoubtedly accounts for the Hugo Stinnes appearing at the bottom of page 7 in the middle of a sentence. While I am advised that there is no roman I on the first sheet, the second sheet does have a roman II and bears the legend: Muelheim Ruhr 1. Maerz 1924.

By Mr. Albrecht:

That would appear to be a reasonable explanation and I assume will take care of the difficulties I have had in reading it. Now, with respect to the translation of the same I had suggested that a certified copy be submitted because, Mr. Mann, while I have not carefully examined the various translations that have heretofore been submitted of original German documents, nevertheless it has come to my attention in one or two very important respects that the translations are inaccurate. I would like to suggest, therefor, that in your interest as well as mine, that a certified copy of the various translations be made a part of the record, as otherwise I may have to have such certified translations prepared at the expense of the petitioner.

By Mr. Mann:

I doubt that such a preparation would be at the expense of the petitioner. We will supply you with a translation of the will.

By Mr. Albrecht:

Of course, I shall not engage in a dispute with you, Mr. Mann, I would simply refer you to the Order of the Court which provides which party is to bear all expenses in connection with the taking of the deposition.

Q. Mrs. Stinnes, Exhibit I, which has been submitted on your behalf appears to be the will of yourself and of your late husband, together with a codicil to the same signed by your husband. The question I would like to ask is whether Exhibit Number I constitutes the whole of the last will and testament of yourself and husband together with any changes that may have been made?

Tr 109 By Mr. Mann:

I understand, Mr. Albrecht, you are only asking her about the joint will of herself and her husband?

Mr. Albrecht:

Mr. Mann, my question was directed to Exhibit Number I which you introduced.

By Mr. Mann:

I do not think that, if the rest of us cannot understand your question, you can expect the witness to answer. I suggest you clarify.

By Mr. Albrecht:

In what respect would you like me to clarify the question, Mr. Mann?

Mr. Mann:

I would like tomake it clear to the witness that you are not asking her about her subsequent wills.

By Mr. Albrecht:

Mr. Mann, the will as I read it provides that after the death of Mr. Stinnes, Mrs. Stinnes might make changes in the testamentary disposition. My question to the witness was put for the purpose of eliciting the information whether any changes had been brought about in the joint will of herself and her husband.

By Mr. Mann:

I think that the question is irrelevant and immaterial but that is an objection that we can make at the time of the reading of the deposition. I make the objection now for the record, however.

By Mr. Albrecht:

Let me attempt to bring order out of chaos. I shall now ask the witness the following question.

Tr 110 Q. Mrs. Stinnes, did you make any changes in this will that has been submitted, or should I perhaps ask whether subsequently you have made a will which would change the terms of this document?

By Mr. Mann:

I object to the question as being irrelevant and immaterial.

A. According to the joint will with my husband I had the right to change the will at any time. I had to make use of this right on several occasions.

Q. So that the joint will of your husband as it appears in Exhibit Number 1 has provisions in it that are no longer effective because you exercised your right to make a subsequent will, is that not so?

By Mr. Mann:

Mr. Albrecht, this will was marked for identification in this deposition to show the document under which Mrs Stinnes took as the sole legatee of her husband Whether Mrs. Stinnes has made a new will or many new wills has absolutely no bearing on this point and it seems to me that your only purpose in pursuing this line of questioning can be to annoy, embarrass or oppress the witness.

By Mr. Albrecht:

I really must object, Mr. Mann, to these curious remarks you have made and to this interruption you are making of a cross-examination which I have a right to conduct for a great many reasons. The questions that I may properly ask the witness need not necessarily be relevant at all There are other reasons for asking questions on cross-examination from a witness and it would seem to me that I would not have to make this clear to you, Mr. Mann. I can only say that these continual interruptions on your part, and I also take exception to the remarks you have just made as to my design or purpose, accomplish only one thing and that is to delay the determination of this examination and I believe I have given sufficient evidence of the fact that I have cooperated with you in an endeavor to obtain an early termination of the same.

A. I could only answer this if I would read the succeeding will.

Tr 111 Q. Do I understand your answer to refer to your own later will?

A. Yes.

Q. Who was the executor of your husband's estate? A. This would seem to be provided for in the will itself.

Q. If I may direct your attention to paragraph 4 you will note that the will provides - suggests, four names one of which is to be selected as the executor of the will. A. It is impossible that I should know today who of the various persons was named to be the executor. It should be understood that in view of the loss that I had suffered . . . . . I believe I left many matters to the Amtsrichter Thomas, I cannot state this any more.

Q. My only interest in asking who was named executor is that the will provided that the executor was to carry on the family business. Does that help you to remember? A. Mr. Thomas remained in the business until he resigned.

Q. Am I to assume from your answer that Mr. Thomas was the executor and that he took over the management after your husband's death? A. He was assisted, as I testified before, by my two sons in Berlin and Hamburg. All this has already been recorded in the minutes of this hearing.

Q. But when you testified you said, I believe, that in the course of 15 months after your husband's death, your sons Edmund and Hugo who held your Powers of Attorney, had brought the business into difficulties by spending 150 million Mark. Is that correct? A There is an error insofar as my two sons were not holding my Powers of Attorney. Both of them have acted very stubbornly and in many cases have acted contrary to my wishes and my intents and contrary to my wish did not keep me informed.

Q. What did Dr. Thomas, the executor do to control your two sons? A. They did not let themselves be controlled. I just said they acted on their own, they did not keep me informed either which they had to do.

Tr 112 Q. Well, did the heirs by majority vote ever decide that the executor should no longer manage the business? A. I cann t give a definite answer to this.

Q. But the will provided that the executor should carry on the business until the heirs by majority vote decided that he should no longer do so. How do you explain that? A. I cannot explain this. This will not be understood. Because since I was alone vis-a-vis the great task before me, I have incessantly been in fight and war and I cannot recollect details. I have stated that in consequence of all differences between us my son Edmund withdrew. Mr. Thomas then also resigned soon thereafter and what choice had I except to try it for the time being with my son Hugo. I have said all this before, will you please read the record.

Q. With whom were you fighting and at war? A. With my sons.

Q. And when did you give your son Hugo a Power of Attorney to represent you? A. As far as I remember only after he had succeeded in obtaining the American loan.

Q. Would you be good enough to bring with you the next time you come a copy of the Power of Attorney which you gave Hugo?

By Mr. Mann:

Mr. Albrecht, a search has been made for such a Power of Attorney and we have been unable to find it.

A. This must be sought for.

By Mr. Albrecht:

Tr 113 But surely, Mr. Mann, there must be a copy in some file in Muelheim of Hugo Stinnes' Power of Attorney.

By Mr. Mann:

Perhaps in Mr. Hugo Stinnes' file.

By Mr. Albrecht

You understand of course, Mr Mann, that I have not asked you for the production of the original Power of Attorney, I have asked for a copy of the same and I wish that you would be good enough to continue the search so that we may put such copy in the record of this proceeding.

By Mr. Mann:

I will gladly look again; however, a search has been made and no copy has been found.

Q. Your husband had a high opinion of your son Hugo's business ability, did he not? A. He estimated his intelligence which I did too and also believed him to be a good business man However, it must not be forgotten in this connection that my son Hugo evening after evening was asked by his father over the telephone regarding the dealings of the Hamburg business and received corresponding directives evening after evening

Q The Hamburg Company to which you have just referred was one of the properties that was transferred to the American Stinnes Companies, was it not? A. Later on, yes - the Hugo Stinnes Gesellschaft fuer Seeschiffahrt und Ueberseehandel.

Q. By later you mean 1926, do you not? A. Yes, at the time that the loan was obtained.

Q. Mrs. Stinnes, will you tell us whether the executor of your husband's estate or someone else filed an inventory of the estate? A. I have no idea.

Tr 114 Q. Well, in connection with the estate there must have been prepared a list of all the assets that were part of the estate. It is that statement that I would like to know whether it is in existence. A. I do not know this.

Q. Do you have in Muelheim today the files relating to your husband's estate? A. I do not know it.

Q. I wish you would be good enough to have someone see whether he can locate the files relating to your husband's estate with a view of discovering the inventory of the assets contained in the same. And if such inventory is found will you not please bring it with you the next time you appear? A. I can make arrangements to try this but I would like to point out that through an air raid in 1943 we have lost the most essential part of all documents. Even iron safes did not withstand the fire.

Q. If you find the files relating to your husband's estate I wish you would also be good enough to have located your husband's property tax return (Vermoegenssteuerbescheid). Will you please be good enough to give instructions accordingly? A. I cannot do more than I have just said before.

Q. Thank you very much. Now, under the will of your husband and yourself all your children were entitled to some part of the estate, were they not? Whether as after heirs (Nacherben) or simply because they were entitled to a statutory share of the estate (Pflichtteil), is that true? A. After the death of the survivor.

Q. Mrs. Stinnes, I would also be interested in obtaining, if they are available, out of the files of your husband's estate any tax reports that may have been made on behalf of the estate of your late husband.

I wish therefore, you would also give instructions that such reports be searched for so that they may be made a part of the record of this proceeding. Will you please be good enough to do that? A This can be done at the same time as the search for the other papers.

Tr 115 Q. Thank you very much I am not sufficiently familiar with the procedure in German Probate Courts to know whether any tax reports of the estate may have been filed with the court itself in connection with the settlement of the estate. I would therefore ask you to be good enough also to instruct that the court records be examined with a view of locating whether there is on record any tax return, or the payment of any estate tax, or the inventory of the assets of the estate, that can be made a part of the record in this proceeding. Will you also be good enough to give instructions that an effort be made to locate whether any such documents are on file with the court? A. I can give instructions.

Q. Thank you very much. A. But 31 years have passed since then. I doubt whether anything can be found.

Q. Well, maybe it is helpful for me to point out to you that Exhibit Number 1, which is the will of yourself and your husband, was found in the records of the court and Exhibit Number 1 purports to be a certified copy of the will. It occurred to me, therefore, that there must be other documents in the record of the court. A. I do not know this.

Q. Now, Mrs Stinnes, the will provides that anyone of the heirs could demand that he be paid out his share in the estate. After your husband's death did any child ask to be paid out his share? A. Yes, my son Edmund. The will provides that in such a case the child will be entitled to receive the statutory amount (Pflichtteil) only.

Q. When did Edmund ask to be paid out his share? A. At the time when he resigned from the firm, end of 1925 perhaps, I do not know the exact date.

Tr 116 Q. Well, wasn't it around the time of the crisis in 1925? A. Yes, in consequence of the crisis, of course.

Q. Now I would be interested in knowing how the amount that was paid to Edmund was arrived at. I should assume that for that purpose there

must have been prepared a statement listing all the assets of the estate. Can you tell us something about that? A. No, no further details because I did not concern myself with this.

Q. Well, who did concern himself with this matter. A. Probably several of the leading gentlemen and the legal division - I do not know it.

Q. Presumably also the finance department, is that not so? A. I cannot say this, I do not know it. It was not my concern. I would not have been able to do it personally. I only know one thing. The account that had been made proved to be too high already a year later and since in the agreement with Edmund there was provided for an arbitration court, this arbitration court met and reduced this sum accordingly to which Edmund agreed.

Q. Are the records of this arbitration court still available in Muelheim? A. I have no idea where files of this arbitration court could be.

Q. Well, I assume that at least a report was made to you or someone in Muelheim by the arbitration court so that provision could be made for the payment of the money accorded to him. I wish you would instruct someone to look for that report on the basis of which Edmund's share was paid out to him. Will you be good enough to do that? A. I was present at the arbitration court myself. I have never received a report and the gentlemen who headed this arbitration court are as far as I know all deceased.

Tr 116 Q. Well, I do not wish to make this difficult for you. The thing I would like to know is on the basis of what document or report did your finance division finally know how much and when to pay Edmund. Can you tell us that? A. Except that I had to be a member of this arbitration court as well as my son Edmund, I did not concern myself with all these matters. I was glad when all this was over. By God, I had more important things to do.

Q. I am sure you were glad when this difficult situation was over, but cannot you tell us who it was that paid Edmund pursuant to the award of the arbitration court? A. No, I cannot say this.

Q. Well, I should assume that it probably was the finance department, wasn't it? A. I can say no more than I have said. I can only add to this that I have an idea that he had been paid off in Berlin, in something other than cash (Sachwerte)

Q. Can you tell us when that was? A. Yes. I have said this before. End of 1925 beginning of 1926. I do not know it.

Q. Am I to understand that he was paid in full before the 1926 agreement with the bankers? A. Yes, as far as I know this was settled.

Q. Well, didn't the payment to Edmund increase the difficulties that you were suffering from in 1926, the financial difficulties that you were suffering from in 1926? A. No, they only derived from the debts which the two sons had made

Q. Can you tell us approximately how much Edmund received when he was paid out? A. I believe that I have said before that I do not know this.

Tr 118 Q. Well, try to think about it for a minute? A. How should I be able to figure this out correctly after 31 years This did not interest me in detail at that time I was only glad when everything was over

Q. I am not trying to hold you to any specific figure, but I think that you should be able to tell us whether Edmund received 1 million Mark or 10 million Mark or 50 million Mark or some amount in between those figures. Will you not try to give us some approximation of what Edmund received when he was paid his statutory amount (Pflichtteil). A. Of what use can an estimate be if it is picked out of the air You are over-estimating in this case my ability to recollect and you are under-estimating what I had to undergo at that time so this fact, as I have stated and as it is a fact really, was of no interest to me I can only say that it were certainly no 50 millions

Q You must excuse me for pressing you so much on facts relating to a very difficult situation Let me ask you now whether any other children asked to be paid out their share in your husband's estate? A. This was the case and made the situation more difficult Influenced

by my son Edmund whom they trusted more than me and my other sons, my daughter Claerenore and my daughter Hilde approached me with the same request.

Q. Claerenore, of course, is Mrs. Soederstroem, is she not? A. Yes.

Q. You say these two daughters asked to be paid out. Did you pay them their shares under the estate? A. No.

Q. So that Claerenore is still entitled to her Pflichtteil in the estate?

By Mr. Mann:

Tr 129 Would you tell us what the Pflichtteil is in the English question?

By Mr. Albrecht:

Will you please put the English word statutory amount before Pflichtteil?

A. No, Claerenore wanted to make a trip around the workd with a car and waited with the settlement of her wishes until after her return.

Q. Well, did you settle her claim after she returned? A. She made an arrangement with her two brothers Hugo and Otto.

Q. Did those two sons buy her share in the estate? A. I did not concern myself with the agreement which my two sons made with my daughter. I do not know its details.

Q. But if such a purchase took place I would assume that a record of that sale was made before a Notary and I would assume that you would also have appeared before the Notary. Have you any recollection of that having taken place? A. No.

Q. Well, what about Hilde, did you pay her out her statutory share (Pflichtteil)? A. My son Hugo made the agreement with my daughter Hilde quite by himself. This only with respect to one half of her statutory share (Pflichtteil) - the other half would only become payable after my death. I do not know anything further.

Q. When was that arrangement made between Hilde and Hugo? A. I do not know this.

Tr 120 Q. Were you a party to the agreement? A. No. I left this entirely to these two

Q. Do you know a Notary by the name of Leveloh? A. Yes.

Q. Don't you remember appearing before Mr. Leveloh together with Hilde and Hugo with respect to this transaction? A. No. I do not remember this.

Q. Would it surprise you if I were to tell you, if I were to suggest to you that you did appear before Mr Leveloh together with Hilde and Hugo for the purpose of recording this agreement? A. This would not surprise me in the least. I did not withhold that I have forgotten many details from that time and the lawyer Leveloh had been in our firm as lawyer and is also named in the will.

Tr 121 Adjourned at 5:30 P. M. September 9, 1955. Mr. Albrecht Continuing the Cross Examination on September 12, 1955 at 3:00 P. M.

By Mr Mann

Mr. Albrecht I believe you requested that a search be made for certain documents Pursuant to your request we made another search for the copy of the Power of Attorney which Mrs Stinnes had given to her son Hugo Stinnes Jr and we were unable to find a copy. A search was made not only of Mrs Stinnes' files and records, but also of the records of the Hugo Stinnes o H with respect to the documents which you requested We have been unable to find any of them Among other documents you asked for that a search be made for a copy of any inheritance tax return that might have been filed. I am advised that under the laws of Germany in force at the time there was no inheritance tax in the case of one spouse inheriting from another Accordingly, there was no inheritance tax form to be executed and given to the German authorities. We have been unable to find any inventory that was used in the settlement with Edmund Stinnes In this connection I must point out that due to bombing many of Mrs Stinnes' files were destroyed and the same is true of the Hugo Stinnes o H and the same is true of the Muelheim finance office.

By Mr. Albrecht:

Thank you, Mr. Mann, but so long as you appear to be testifying as to certain facts, maybe I can say with respect to your last statement that while I appreciate that in the bombing attack in 1943 many of the files in Muelheim must have been destroyed, nevertheless there has been testimony adduced by Mr. Unger, the director of the finance department, two years ago when Mr. Wieferich and I examined him to the effect that there were records also outside of Muelheim which became available subsequently and that in the destruction of the Muelheim office building there was found a safe that did not burn and included many of the financial records of the firm and its partners and that furthermore there were available certain card files as a result of which all financial information, or substantially a large part of the information was reconstructed, so that on the basis of the same all returns that became necessary to file thereafter were prepared. I hope, therefore, that another effort be made to locate these financial reports which have a strong bearing on the
Tr 122 facts of the matter. Now, with respect to your statement as to the German law in effect at the time of the late Hugo Stinnes Sr's death. While I accept your statement that at that time there was no tax payable by the surviving spouse that inherited all of the decedent's property, nevertheless I am informed that when the German state found that no tax would be payable on the estate of Hugo Stinnes, that a law was subsequently introduced into the legislature which became known in popular parlance as the "lex Stinnes," according to which the estate became liable to the payment of taxes and I am informed that a tax was paid and I am informed that a property tax declaration (Vermoegenssteuerbescheid) was filed with the tax authorities. I would ask you therefore if you would be good enough to look in the files of Mr. Stinnes' estate and see whether that tax return and record of the tax paid may be found. Now, Mr. Mann, I think it is apparent by this time as to why I am anxious that the papers that I have requested and that you have tried to produce be made a part of the record of this proceeding. We must obtain some information in connection

with the same as there is nothing at present of record with respect to it of the assets and property holdings of the late Hugo Stinnes which found their way into the possession of the witness. I shall therefore also ask you to be good enough to have a search made with a view of locating such part of the books of Hugo Stinnes o. H. in which are recorded the assets and holdings of the same and of the witness as a partner of the same. With respect to the witness' personal account in the firm we should have produced a statement of the property interests and assets which were credited to her account after her husband's death and also after the 1926 loan that was floated in America, and also a present statement of account perhaps of 1954 or 1953. Furthermore, I would like an effort to be made to find the property tax declaration (Vermoegenssteuerbescheid) of the witness that was made after her husband's death. I am not certain when such report was filed but I am informed that such reports were filed every four years and I believe, therefore, that the first property tax declaration after the death of Hugo Stinnes was in 1928, although it might have been in 1926. I would also like to have the same property tax declaration of the witness for the year 1936 and for the year 1940, 1946, 1948, 1949, which, I may add, became necessary by reason of the fact that Germany had received a new currency only in the summer of 1948. Furthermore also for the year 1950 and 1953. I also wish that a search be made for the first income tax return made by the witness after her husband's death, the income tax statement made after the 1926 loan was

Tr 123 floated in America, and a recent return let us say of the year 1954 or 1953. Furthermore after the war there came into effect a German law called The Law for the Equalization of Burdens (Lastenausgleichsgesetz) and I wish you would be good enough to have a search made and produced a copy of the report filed pursuant to this law both by Hugo Stinnes o. H. and by or on behalf of the witness. If unknown to me, there were several reports filed pursuant to this law in which there is an itemization of the property holdings on the basis of which the tax is assessed and payable, then I would also like to have produced copies of those reports.

At the end of the last session I questioned the witness respecting the sale by Claerenore to Otto and Hugo and the sale by Hilde to Hugo and I ask to have a search made and produced the notarial protocols that were entered into respecting these two transactions.

By Mr. Mann:

Mr. Albrecht, in making your request you are aware of the fact that the witness has testified that tax returns were filed which were false and which concealed her foreign property and that a disclosure had recently been made to the German Government of the fact that those tax returns were not accurate. I ask if you had that in mind at the time you made your request for these various tax returns.

By Mr. Albrecht:

I had that very much in mind and I regret having to trouble you so much in this connection, but I feel that it is my duty to the court and that the court will want to see the extent of the activity which the witness alleges failed to disclose property which she owned so that the court itself can make up its own mind and come to the conclusion which we shall urge upon it (a) that the story is not plausible, (b) that the witness has merely testified for reasons that I hope - testified to the non-disclosure of foreign holdings - for reasons that I hope will become more apparent in the course of the examination and (c) that such statements made by the witness are not in accord with the record being made in this proceeding.

Tr 124 Q. Mrs. Stinnes, when we last met on Friday we were discussing the sale by your daughter Claerenore of her interest in her father's estate to her brothers Otto and Hugo. Can you tell us on what basis the money was agreed upon that was to be payable to your daughter?

A: No, I do not remember the extent of the money. Even less so since these agreements were changed in the meantime. I do know, however, that, I believe, instalment payments were made to my daughter - that is via the Edwagmij. I do not have to say any more to this.

By Mr. Albrecht:

In view of the witness' answer, Mr. Mann, I wish that an effort also be made to find copies of the notarial protocols evidencing the

changes in the original agreement of sale between Claerenore and Hugo and Otto.

Q. Mrs Stinnes, I was not so much interested in learning how the payments were made to Claerenore. My question was, on the basis of what statement of property was the amount fixed that was paid her? A. I have no idea.

Q. When did this agreement take place? A. I believe after the return of my daughter from her trip round the world - that must have been around 1929 and 1930.

Q. Was it that late, or was it right after the death of your husband, perhaps even before 1926? Can you tell us whether I am right? A. No, my husband did not live any more at that time. No, that was certainly after the return of my daughter from her trip around the world. To my knowledge I answered this before and this will thus be in the transcript.

Q The only reason I still harp on this subject is that I wondered whether you were not slightly mistaken and that the settlement between Hilde and her brothers was before 1926 - perhaps around 1926?

By Mr. Mann

Mr. Albrecht said that he was asking about Hilde - his previous question had concerned Claerenore.

Q. I am afraid I am the cause of the confusion I am continuing the same though with respect to the agreement with Claerenore. The only question I ask you is, do you think that the arrangement between Claerenore and her brothers was really as late as 1929 or was it earlier, around 1926 or 1927? A. No. The agreement was only made after the return of her trip around the world. Until that time she had waited upon my request.

Q. Now, just a question or two about the agreement between Hilde and Hugo. Can you tell us on what basis the amount was fixed that was to be paid to her? A. Here again I cannot give any exact figure. I only know, I believe I can recollect, that my son Hugo borrowed the amount

of slightly more than one Million Marks from the Hugo Stinnes F. which he still owes to the O. H. and which practically was reduced to a minimum by the currency reform. I cannot recollect any further details.

Q. Which currency reform (Geldumwertung) do you mean? A. The one that took place in 1948.

Q. Now, just a question about Hugo's Power of Attorney, which I am informed it has not been possible to find. When you revoked Hugo's Power of Attorney, did he not give it back to you? A. According to my knowledge, no. I do not remember having received it back, although he should have returned it, of course.

Q. Then you really are not sure whether he did or did not return it to you? A. No, but this does not detract from the fact that I withdrew his Power of Attorney from him, respectively, to use a figure of speech, he threw it at my feet and I picked it up, so to speak.

Tr 126 Q. Now, Mrs. Stinnes, the joint will of yourself and your husband refers to Mrs. Nora Dunlop-Wagenknecht. That person actually is your sister who is called Mrs. Nora Hermann today, is that not so? A. Yes, this is the same person.

Q. The will also states that immediately upon the death of Mr. Stinnes there was to be erected at Asa, I assume a house - it is described in the will as Holzbau - for your personal use. My question is, was such a Holzbau built after your husband's death? A. I regarded this to be a very dear thought of my husband because we both had had many nice hours at the place where this house was to be erected. I never built this house, the money was needed for other matters.

Q. Well, that is the point I had hoped to bring out, namely that the financial condition of the family after your husband's death was such that moneys were not available for such purpose. A. I must correct an error of yours. This had nothing at all to do with the financial situation of the family. But the estate Asa was administered independently and never, even after it became American property and they agreed to let me reside there, I never used a single penny out of the estate Asa for my personal purposes. The money would have easily been available

from my own funds. I wished to correct this error immediately.

Q. I am sorry to say I do not wholly comprehend your answer because certainly after the property was sold or hypothecated to the Americans none of the income from the Asa administration was available to anyone except the Americans. A. The income of the estate Asa, with which I was completely familiar, was used to develop the estate and to bring it up to the standard in which I handed it over to my children eventually. If I may only cite an example: when my husband bought the estate there were 30 cows in the barn which were all infected by tuberculosis, all of them. Then you can imagine, if you have any idea about agriculture, how many matters we had to put in order. This was not at all completed when my husband died.

Q You made the statement, Mrs Stinnes, that when your husband died statements appeared publicly, I think you said in the obituaries, to
Tr 127 the effect that he was the owner of 250 companies. Was that also in your estimation a figure of speech and, if not, is it possible to obtain a list of those companies anywhere? A. With this statement - a reference to press reports - I have only replied to a question which I could not answer I never thought about it how many firms my husband possessed - I never counted them.

Q But certainly such companies as he did own would necessarily have been included in an inventory of the property included in his estate, whether by way of inventory or by way of a property tax declaration (Vermoegenssteuerbescheid), would it not?

By Mr. Mann:

I believe that I mentioned earlier, Mr. Albrecht, my understanding that at the time of Mr. Stinnes' death there was no inheritance tax when property descended from one spouse to another. If that understanding is correct there would be no tax declaration, and I believe that the witness has said that she knows of no inventory. Accordingly I would like to suggest that we follow another line of questioning which might be a little more profitable towards bringing this deposition to a conclusion

By Mr. Albrecht:

Mr. Mann, you have made a statement on the basis of what you have been informed the German law to be at the time of Mr. Hugo Stinnes' death. In rejoinder to your previous statement I have stated what I have been informed happened shortly after Mr. Stinnes' death, so that subsequently it became necessary to file a property tax declaration (Vermoegensteuerbescheid) and to pay a tax on the estate. My effort is merely a continuing one to obtain at least a few of the estatements, declarations, tax returns, inventories, whatever they may have been, in order to get something to start from which would show what the assets of the estate were that this witness inherited, and I have therefore asked you to be good enough, in the light of my statement if that statement is correct, to look once more into the files relating to Mr. Stinnes' estate with a view to locating the papers I have requested.

Tr 128 Q. Now, Mrs. Stinnes, after the First World War, or between the end of the war and your husband's death, the economic situation of the world and particularly of Germany was pretty poor, wasn't it? A. It became difficult for Germany, certainly, after such a war and after such a peace treaty, a so-called peace treaty.

Q. Well now, another thing with which the German economy had to contend at the end of World War I, was the inflation of the currency, was it not? A. Yes.

Q. And this inflation became very serious, did it not, by the fall of 1923? A. I was not able to measure the degree of the difficulty.

Q. Well, I should think that with your interest in the business affairs of the family business, you would have had a pretty good knowledge of how serious the German economy was affected by the inflation. Isn't that a fair statement? A. I believe every German gave the matter considerable thought.

Q. And you remember, do you not, that when the currency was revalued or better stabilized, in the fall of 1923, the exchange that took place was one billion Marks for one new Rentenmark. Do you remember that? A. Yes, I think this approximately to be true.

Q. And these awful conditions, of course, seriously affected the Stinnes family enterprise, did it not, and caused it considerable losses? A. The same way as every other German and every other German business.

Q. And on top of that came the very unfortunate death of your husband, did it not, in 1924? A Yes.

Tr 129 Q. And all these unfortunate circumstances contributed substantially to the crisis that came upon the family business in 1925 and 1926, did it not? A. No, they had no bearing on it.

Q. Well, did they improve the condition of the family business and by that I mean the declining German economy, the inflation, the introduction of the new currency, and the unfortunate death of your husband? A. The unfortunate death of my husband was of course a huge loss for the family, in particular for the sons who lost their advisor. For the family fortune, which consisted of firms running favorably until that time and being managed well until then and prosperous factories, all these factors did not play a decisive role.

Q. I did not ask whether all these factors, including the unfortunate death of your husband, played a decisive role in the decline of your family business. I asked whether it contributed substantially to the business crisis of 1925 and 1926. A. According to the truth I say, not at all. The crisis was only caused by the extent of the debts which my sons had made in Berlin and Hamburg.

Q. Well, in that connection I would like to ask you whether after you gave Hugo your Power of Attorney it was at any time revoked before 1950? A Before 1950? He only received it in 1926, I believe, after we had obtained the American loan. In the meantime I do not remember to have withdrawn it, although I had serious differences with my son Hugo often regarding the business management.

Q. And when you finally did revoke Hugo's Power of Attorney, did you immediately give a new Power of Attorney to your son Otto? A. I cannot say it to the day - of course I had to have a representative.

Q. I am not trying to tie you down to a specific date. I think you

testified that you revoked his Power of Attorney, or accepted its return, on July 13 or 18, 1950. All I want to know is, did Otto thereupon re-
Tr 130 ceive the Power of Attorney from you or was it at some later date in the subsequent year? A. Of course my son Otto, who had already been in the firm, succeeded in holding my Power of Attorney.

Q. And after you gave Otto your Power of Attorney, did you have occasion to change it on a later date in any respect? A. Not in the least.

Q. Your attorney has shown me, and is about to submit for the record, a Power of Attorney which you gave Otto some time in 1952. That date would be maybe as much as two years after Hugo's Power had been revoked, and therefore I merely want to find out what happened between the time Otto's Power was given him and the date when Hugo's was taken back? A. Then Otto acted with my Power of Attorney the same way Junior had done so years ago, only that Otto asked me about everything whilst Junior never had done so.

Q. Is it fair then for me to interpret your answer to mean that between 1950 and 1952, when you gave Otto a written Power of Attorney, he was, of course, empowered orally by you to act in your interest. Is that a fair statement? A. Practically yes.

Q. I come back for another question with respect to the economic conditions after the First World War. In the statements of the underwriters of the American loan which have been marked as Exhibit 2 and 3, the attention is called to the, and I quote: "The conditions existing in Germany in 1924 and 1925, accompanying the stabilization of the German currency and resulting in the readjustment of the whole German financial structure" and it also speaks of the competition and subsidized English coal in 1924, all of which the Stinnes enterprises had to contend with in operating in that difficult period. So I ask you again whether the various factors that I mentioned to you, including these pointed out in the banker's statement, were not primarily the reasons for the financial difficulties of the Stinnes business? A. I stick to my aforementioned statement.
Tr 131 These papers, Exhibit Number 2 and 3, had been drawn up for a

special purpose and certainly corresponded with the facts This had nothing to do with the fact that we in Germany came into that crisis only through the debts If I may add something. If the economic fundament, the internal basis of my husband's enterprises after two years of destructive management, had not been such as presented to the banks and which had been examined in all details by them, we would never have obtained the loan of 25 million dollars, because at that time already there was a general economic depression in Germany and in spite of it we obtained the 25 million dollars - a proof for the sound economic situation of my husband's enterprises, his creation, in spite of the mistakes which my sons have made I do not have to add anything more to this question.

Q. Far be it from me to detract from the greatness of your husband's work, but I would like to suggest that the only reason that the American bankers loaned 25 million dollars is that the net balance of assets over liabilities was somewhat more than 25 million dollars, so as to offer security for the loan, is that not so? A The American bankers must have been satisfied with the securities which we offered, otherwise they would not have granted us the loan

Q. Well now, it is true is it not, that since 1913 Hugo had served as his father's confident and chief advisor and had been closely identified with all phases of the Stinnes enterprises? A In such a manner I cannot say yes He has never been an advisor of his father This was not necessary for his father According to an old German saying; if you turn it around we get the true picture.

Q Well, if you can't agree with that statement that I have made, would you say that the bankers in selling the loan to the American public made a mis-statement? A I did not say that I expressly stated that this document which the bankers gave to the customers as far as I know is according to the fact, but that this has nothing to do with the other questions put to me These are two entirely different matters. The American creditors made a very good business with this loan, and the bankers too, and they know it too Never, whether in Germany or else-

Tr 132 where has anybody lost a penny with my firm or my husband's firm

Q. Well, I take it then that you say the bankers' statements which are marked Exhibit Number 2 and 3 represent the facts of the situation, is that so? A. I just said this before.

Q. Well now, let us come to the crisis of 1924 and 1925 which you say was occasioned by the free spending of your sons Edmund and Hugo. I think you have already testified that at the time of the death of your husband Edmund had only recently come into the business. If I recollect correctly he had been in the business only two years; is that correct? A. I believe yes. I would have to figure that out.

Q. Do you not remember that some time in 1925 Amtsrichter Thomas and Dr. Soeller came to you to warn you that if Edmund was permitted to continue to manage the Berlin office, that the Stinnes business would be in serious difficulties. Do you remember that? A. I have no idea that Mr. Soeller said only one word of warning to me. Mr. Thomas once expressed a warning, but then it was already too late and furthermore neither one nor the other son listened to that.

Q. Don't you remember that Judge Thomas and Dr. Soeller came to see you at Weisskollm in Silesia and told you that unless something was done to stop Edmund, the business would be bankrupt within six months. And that you asked them to take it up with Edmund and that they refused on the ground that only you could accomplish anything with Edmund. You thereupon said that you would take it up with Edmund, but apparently nothing was done. Can you remember anything about that situation or conversation in Weisskollm? A. No, with no word, no idea about it. When should this have been?

By Mr. Mann:

Tr 133 Mr. Albrecht, you have now had three sessions and portion of another, in which you have examined the witness. I wonder if you could give us some estimate on how much longer your cross-examination will continue.

By Mr. Albrecht:

I am unable to estimate at this time the length of my cross-examination. The same will depend to a large extent on whether you will be

able to supply me with the documentation I have requested On the direct examination of the witness through you a lot of statements were elicited that are completely unsupported by any factual basis whatsoever I take it that it is my responsibility in attempting to destroy the credibility of this witness and otherwise to make a record favorable to the proposed adverse parties whom I represent, to go into all factors and situations that relate to the relations between the proposed adverse parties whom I represent and the witness and her partners Thus far I have seen no record of any substantial worth of evidence that appears in this record and I think that you and the witness could be very helpful both to us and the court in evaluating the testimony given in making a strong effort to supply us with the documents that I have requested I have already given much evidence of co-operating with you and in trying to achieve an early termination of this examination And I shall continue to do so and I bespeak your assistance to that end now that I am discharging my duties as cross-examiner

By Mr Mann:

With respect to the many documents which you have requested, Mr Albrecht, may I ask with a view of lightening the load of the burden on the petitioner, whether you have any of those documents in your possession, or copies thereof - I ask you because if you have those documents, perhaps the witness could identify them for the purpose of this record and she would be spared the burden of this tremendous search.

By Mr Albrecht

I do not think that your question directed to me is altogether proper. The request I have made of you, Mr Mann, is not of such tremendous proportions that the request cannot be met and I should think fairly ex-

Tr 134 peditiously All of these documents that we have been discussing up to now relate substantially to the estate of the late Hugo Stinnes and the assets contained in the same and that were not taken over by the witness, together with certain tax reports all of which it would seem to me must be in one or two files in Muelheim Now it is the witness' story that has to be tested The witness has told a story by word of mouth

which is completely unsupported by any written evidence except a few papers of minor interest that merely touch the subject matter at its periphery. The fact that I have asked for an extended list of documents would not appear to me to present insuperable problems. I have mentioned before that while many documents undoubtedly have been destroyed it must be so that there are many that are still available that would be helpful in determining what the court will want to know upon this proceeding. I have of necessity been forced to ask you for a long list of documents because to date not a single one of those documents has been made a part of the record of this proceeding. I dare say that all the documents I have requested will not be available, but it would seem to me that some documents that would be of vital importance to this proceeding and to your case would be available and those, I think, should be produced here and I cannot believe that they will require the labor of more than one hour or two to locate.

By Mr. Mann:

Aside from you opinion of the case and your estimates of the time involved, I must put my question to you again. Do you have in your possession any of the documents which you have requested the petitioner to produce at this examination. If you do, please tell me in order that we might spare the petitioner this burden by permitting her to identify any copies that you might have in your possession. Do you have any of the documents you have requested of the petitioner, or copies thereof?

By Mr. Albrecht:

Well, Mr. Mann, at the moment I am able to state - and perhaps it is just as well that I do so - that I have two documents that are copies of documents that previously have been certified to the Government of the United States in the year 1946 of being located in the files in Muelheim.

By Mr. Mann:

May I suggest that in that case you tell us what those documents are?

By Mr. Albrecht:

Tr 135 That is the property declaration form (Vermoegenssteuerbescheid)

for 1936 and for 1940.

By Mr. Mann:

I understand that you have copies of the property declaration of 1936 and 1940. May I suggest in that case that there is no necessity for the petitioner to produce them at this hearing.

By Mr. Albrecht:

Well, am I to understand that if I offer them as a part of the record of this case, that you will accept the copy I offer as an exhibit and not compel me to produce the original?

By Mr. Mann:

I think that depends upon whether the petitioner can identify the document. My purpose in making this request of you is to relieve the petitioner of any burden of search that I can.

By Mr. Albrecht:

Well, I do not think that I shall produce them if I do not have your agreement that they will be acceptable under evidence. Let me just repeat that these two documents were certified as copies of the originals to the Government of the United States the originals of which were represented as being located in Muelheim.

By Mr. Mann:

In the possession of the petitioner?

By Mr. Albrecht:

The certification is silent on that. I suspect maybe Mr. Wieferich can collaborate me on that that it was in the files of the partnership that they were certified to be.

By Mr. Wieferich:

I believe the documents you refer to were produced at a prior deposition from the files of the family company which is identified in this record as Hugo Stinnes o. H. I do not recall which deposition actually they were produced at.

By Mr. Albrecht:

It so happens that one of them was offered by you through your witness Otto Stinnes and the other was offered by you when you cross-

examined Hugo Stinnes

By Mr. Mann:

Tr 136 Are there any further documents which you have requested of the petitioner which you have in your possession or of which you have copies in your possession?

By Mr. Albrecht:

With all respect, Mr. Mann, I do not feel that it is incumbent on me to supply you with the information that I may have gathered in preparing myself for the cross-examination of your witness. I have never heard of counsel asking opposing counsel to reveal how much evidence he had in his possession that would benefit his client presumably.

By Mr. Mann:

Mr. Albrecht, we intend to make every effort to locate any relevant documents that may be in the files of the petitioner. However, I reiterate that my purpose in making this request of you is to relieve the petitioner, an old lady of 83 and in frail health, of as much of a burden as I can.

By Mr. Albrecht:

I think you are to be commended for that, Mr. Mann, but I represent interests all of whose property is now claimed by this frail old lady of 83 years. I owe a duty to my clients and I do not think that I am justified in revealing to you, Sir, the evidence that is presently available to me. I have already revealed some of it and I am willing to offer that, provided it can be reproduced and translated, so that it may go under the record if there is no objection to it as evidence.

By Mr. Mann:

I can only say this, and I do not care to press the matter further, that we are not here admitting documents into evidence - that will be done when and if the deposition is read in court. We are making documents for identification and asking the witness to comment concerning them.

Tr 137 Adjourned at 5:50 P. M. September 12, 1955, Mr. Albrecht Continuing the Cross Examination on September 13, 1955 at 3:00 P. M.

By Mr. Mann

Mr Albrecht, pursuant to the request which you made in our session of yesterday we have conducted a search of the files of the Hugo Stinnes O H and of the petitioner. We have been able to find the following: a property tax declaration covering 1924, it was filed as of January 1, 1925, and a property tax declaration covering the years 1928 and 1953.

By Mr. Albrecht:

Of whom, may I ask?

By Mr. Mann:

Mrs. Stinnes. And we have found property tax returns of the petitioner for 1928, 1946, 1948, 1949 - for some reason we cannot find 1950 - and we found 1953. Now, I notice that you had the property tax return for 1936 and 1940. We have been unable to find the same. Now we have found the petitioner's income tax returns for 1925, 1927 and 1953. The forms relative to the equalization of burdens have not yet been filed, accordingly there is nothing to give you on that. We have Mrs. Stinnes' account with the O H. for 1954 and we were looking for these earlier accounts which you have requested. We have the copies of the notarial protocols of the transactions whereby Claerenore Soederstroem then Stinnes and Hilde Fiedler then Stinnes sold certain of their rights in and to the estate. You will recall that yesterday there was some discussion about the lex Stinnes. At the time I told you that I was advised that there was no inheritance tax under German law, that is in 1924, where the inheritance passes from one spouse to another. I believe you said that you were advised that a lex Stinnes, so-called, was subsequently passed and that the law did require that an inheritance tax be paid on the Stinnes estate. We have explored this matter further. As a matter of fact we have consulted Dr. Soeller who at the time was lawyer in the Hugo Stinnes G.m.b.H and Mr. Unger, who is sufficiently identified in the record. They advised that there was no inheritance tax involved on the estate left by Hugo Stinnes since the inheritance went to his wife and that at that time

Tr 138 German law required no inheritance tax be paid under such circum-

stances. While an inheritance tax law which would cover the situation of one spouse inheriting from another was subsequently passed, that law was not retroactive. Accordingly, the position which we took yesterday to the effect that there was no inheritance tax payable on the inheritance which Mrs. Stinnes received as the sole legatee under her husband's will seems correct. Now, Mr. Albrecht, we are making every effort to get the documents which you require. I would, however, ask you at this time that if you are going to require further documents from the petitioner that you now advise us in order that we may start our search for them. By advising us now, I believe, you can save the petitioner some of the burden that might be involved if your requests were subsequently made.

By Mr. Albrecht:

Thank you very much, Mr. Mann. I would appreciate it, of course, if the efforts were continued to locate the documents that I have requested and which it would be very helpful to have in the record. I have no desire, of course, to deprive the petitioner or her organization of these original documents and if they can be produced with the necessary photostats upon identification of the originals they shall, of course, remain in petitioner's possession. Insofar as I am able to do so, and as soon as I ascertain that certain further documents would be useful to have a part of the record of these proceedings, I shall of course communicate my request to you without delay.

Q. Mrs. Stinnes, could you tell us briefly why Edmund desired to be paid out his inheritance as soon after his father's death as he did? A. No, I never asked for the reasons.

Q. Well, he was pretty angry at the time, wasn't he? A. Of course, this was very natural.

Q. You had, no doubt, called him to account for his administration of the affairs in Berlin? A. Not even that. It was a special case, if I am asked about it, and even must say that: being the chairman of the
Tr 139 board of the Muelheimer Bergweksverein he had written a letter to the management which was impossible and the gentlemen of the management of this Corporation approached me one day and told me I had to

dismiss my son, because this constituted an impossible behavior on his part they could not tolerate.

Q. How long had Edmund been chairman of the Muelheimer Bergwerksverein? A. I cannot say it to the day and hour, he became chairman after the death of my husband.

Q. But how could a young man with only two years experience in business be appointed to so responsible a position as chairman of the Muelheimer Bergwerksverein? A. This was an agreement with the management of the Corporation and Edmund had given proofs of good ability and in the long run young people must be given the opportunity to develop.

Q. You mean the opportunity to spend 150 million Marks without control from the majority owner of the family business? A. No, I did not mean that. The 150 million have in majority been spent by my son Hugo in Hamburg and not by my son Edmund.

Q. And yet it was your son Hugo that you gave your Power of Attorney to that remained in force until 1950, is that not so? A. Yes, in full realization, because I believed he would learn from his mistakes. Thus I only followed the example of my husband. Already under my husband he had made heavy mistakes and still my husband continued to confide in him that he would learn from his mistakes.

Q. Well, he did learn from his mistakes, did he not, and he did a pretty good job for the family business and he is recognized today, is he not, in the whole Ruhrgebiet as a very good business man - in fact has been recognized ever since he took charge of the family business as a very able business man? A. I cannot say anything regarding the latter. I never caused to obtain any information on one of my sons. Re-
Tr 140 garding the first part of the question I can only say, without disparaging his merits in obtaining the loan which, however, he would never have succeeded in obtaining without the best assistance - and I only name Captain Rieber without whom he would never have succeeded. But in spite of this any unfair judgment is far from me. I know what I owe him, but I also know and am aware of the difficulties I have had with him. I do not like to say any more here in this respect and to wash still more

dirty linen than has already been done. But after my consideration he really has not fully learned from his mistakes even up to date, otherwise it would not have come to a breach with his mother, who had followed him in confidence for 25 years.

Q. My dear Mr. Stinnes; as I listen to your statement I gathered the impression that it was the break between you and Hugo and the fact that he would not listen to you that is the most important thing to you. Please forgive me for saying it, but I cannot understand the high moral tone you voice against Hugo when I think of the story that you told us some days ago where for 30 years, I believe you have stated, you filed false returns to the German fiscal authorities and were responsible for other acts that can hardly be termed creditable. Is that an unfair comment on your answer?

By Mr. Mann:

I think your comment is something in the nature of a speech. I think, moreover, that I must object to this entire method of questioning, Mr. Albrecht. I cannot see that by your questions you are attempting to elicit any testimony from the petitioner which might have any bearing on the matter before us. Accordingly I can only suggest that these speeches which you are making to the petitioner can only be for the purpose of annoying, embarrassing and oppressing her.

By Mr. Albrecht:

Mr. Mann, you do not seem to realize that I have to discharge my responsibility as cross-examining counsel and I do not think that your remarks are helpful in bringing this examination to an early close.

By Mr. Mann:

Tr 141 I made my comment in the hope that I could persuade you to ask questions which might serve to determine this hearing. With all due respect to you as a cross-examiner my observation of your questioning thus far is that you have no desire to determine this hearing.

A. In here many things are being combined which do not belong together. I have said before, and to my knowledge it has been sufficiently justified, why I submitted the last claim. I justified it, if I must repeat

this once more: under such considerations which occured to me after the withdrawal of my son Hugo, and in fact based on his acts since 1948 1950, following which I had to say to myself to make it more clear: you have given more confidence than was justified, your confidence has been misused and you have every reason to examine the mistakes which have been made in the course of the past decades and on that basis the claim arose. I did not conceal that this camouflaged property which was located in foreign countries did burden my conscience, and that I endeavored to get a clear conscience. But what has all this to do with these matters and the other questions which refer to Hugo? The reason, if you want to know it absolutely - I do not like to wash dirty linen and it is absolutely an internal affair between mother and son why I have separated from him - however, to say it with one sentence, I did not want a repetition of the year 1925 once more because now, in 1952 -, no, in 1950 - I would not have obtained an American loan any more. I have always felt a trustee for my children. I could not bear it that one of my partners was using my money as if it were his money and not even asking me. And this after I had warned him and had said to him, and given it to him in writing that he was not allowed to do so and he still continued to do it. That was the end for me because otherwise I would have done injustice to my other children and would have sinned seriously against the confidence which my husband placed in me when he made me his sole legatee of his estate. Now you know the reasons why I had to separate from my son Hugo and I should like to know what father or mother undergoing such an experience would have acted differently.

Q But that is exactly my point: Your conscience did not begin to bother you until the break with Hugo in 1950, isn't that so? A. I can

Tr 142 only say, why this question?

Q. When Edmund left the business and was paid out, did you and the other members of your family maintain contact with him? A. I had to be in contact with him until the last moment. I said this already before in the record, there was an arbitration court where he and I participated. This has all been recorded in the transcript.

Q. I do not think you understood my question. What I wanted to bring out was that Edmund left Germany thereafter and I wanted to hear from you how long he remained away without keeping in touch with you and the other members of your family? A. After the separation with me Edmund did not leave Germany. He had much to do in Germany. He was forced to leave Germany - if you want to know it - during the Hitler time because he, who had been in the First World War and received high decorations, was forbidden to reenter the German army with his old rank. This was such a humiliation for him that he left Germany for that reason. This was during the Hitler time, I do not exactly know when.

Q. You still do not answer my question which was designed to find out whether Edmund remained on good terms with you or whether he refrained from keeping in touch with you and the other members of his family, and I would like to know how long that continued? A. To get your question right, how long I did not hear from my son Edmund? I will gladly answer the question. Until the moment, I believe it was two years ago, when he openly acknowledged that he had made heavy mistakes at the time, that he had not been able at that time to complete the task which he had felt to be able to do, and that he would act quite differently today. This open acknowledgment of a man of then 57 years appeared to me to be such a spiritual greatness that I offered him my hand when he asked me for it. He had learned from his mistakes, this I should like to add.

Q. When Edmund made his peace with you, was he taken back into the family business and given a position? A. No.

Q. Well now, you said that Edmund and Hugo between them after their father's death spent 150 million Marks of the family's money. That
Tr. 143 is a rather large sum and I wish you would tell us, insofar as you are able, for what purposes this money was spent? A. That was all my money, not the family's. Well, I have stated this before, it is in the transcript.

Q. Well, can you identify by name the particular properties or companies or other things that might have been purchased with that 150

million Marks?" A I cannot do that any more today

Q Would it not be possible for your employees in the finance department to advise you on that point? A I do not know that I can try it

Q. I would appreciate it if you would make that effort

By Mr. Albrecht

Now, Mr Mann, it occured to me that in connection with the notarial protocols that you are going to produce relating to the sale of Claerenore's and Hilde's share in their father's estate, if you would also produce copies of such changes as Mrs Stinnes may have made to the joint will of herself and her husband. The statement has previously been made by you on the record that Mrs. Stinnes has made wills subsequently to the joint will of her husband and it would be of interest to examine those in this connection.

By Mr. Mann

I do not recall that I have testified concerning Mrs Stinnes having made a will, or wills, or changes to a will I have asked you on occasion to clarify questions which you directed to Mrs. Stinnes and which concerned the will I suggest to you, Mr. Albrecht, that any inquiry pursued along the lines of any wills that Mrs Stinnes might have made, or in the future might desire to make, can have no bearing on the matters under consideration here I can only suggest to you, as I did before, that your attempts to question her about any will she may now make, or might desire to make can only be for the purpose of annoying embarrassing, or oppressing her

By Mr. Albrecht

Tr 144 That is the last thing in the world that I wish to do and I shall continue to treat the witness with all courtesy and consideration that I can marshal If your remark on the record is designed to inform me that you will refuse to produce those documents then I wish you would state so

By Mr. Mann

I am happy to hear your statement that you will treat the witness with all the courtesy and consideration that you can marshal. In that,

let me suggest in that connection, that you ask her questions which are purposeful in this hearing and that you refrain from repeating questions concerning the family break, which you can plainly see emotionally disturbs the witness. I have not said that we would not produce the will. I have merely said that I thought your questioning had no purpose other than to annoy, embarrass and oppress the witness. Could you tell us the relevancy of such will?

By Mr. Albrecht:

Mr. Mann, I do not propose to inform you as petitioner's attorney of the theories underlying my cross-examination or the various questions that I am going to ask. It is elementary that the functions of the cross-examiner be pursued for a number of reasons that it should not be necessary for me to illucidate to you. If I may interpret your remarks then to mean that you will produce the wills of the petitioner or the changes that she has made in the joint will of herself and her husband, then I will let the matter drop, otherwise I shall have to ask the petitioner directly.

By Mr. Mann:

You are free to interpret my remarks any way you care to.

By Mr. Albrecht:

Well, all I want to know is are you going to produce them or are you not going to produce them, that is all.

By Mr. Mann:

We will consider the matter.

Tr 145 Q. Mrs. Stinnes, I would like to turn now to discussing some of the foreign properties which you have previously claimed belonged to you. Now, let us take up first of all Fundus AG, a Swiss Company. I believe you testified that that Company was formed by your husband, is that correct? A. Yes.

Q. When did he form that Corporation? A. I do not know it.

Q. Where is that Company located? A. In Zuerich as far as I know. I have said all this already in the transcript.

Q. Who organized the Company, your husband or someone else whom he directed to do so? A. I have already said for the transcript

who managed the Corporation.

Q. What was the capitalization of the Company? A. I cannot know this any more today.

Q. Who paid in the capital of the Corporation? A. Since it was formed by my husband, I believe my husband.

Q. How much did he pay in? A. I do not know.

Q. Were the shares of the Corporation name shares or bearer shares? A. I do not know it.

Q. Well, have you any idea as to how large a Corporation it was financially? A. No.

Q. Have you ever known how large the Corporation was financially?

Tr 146 A. I cannot say this any more today.

Q. Since your husband's death have you received any reports from the Corporation? A. From this Corporation, no.

Q. Have you ever received any balance sheets of this Corporation? A. I believe I have said before that I left all this to my son Junior and that very soon ~~after~~ the death of my husband the time came when he did not wish to say anything about these foreign corporations.

Q But Hugo has not represented you since 1950. What have you heard about Fundus since 1950? A. I believe I have said all this already for the transcript.

Q. I suggest you tell it to us again.

By Mr. Mann.

Mr. Albrecht, would you put the question again. I am not sure that the witness understands it.

Question repeated to witness.

A I cannot say it for the moment.

Q. I really would be interested to know because Otto has had your Power of Attorney since 1950 and has been managing the business and Otto has testified in answer to questions by Mr. Wieferich that he had never heard of Fundus. How do you explain that? A. This question has also been put to me before and the transcript gives my statement. I ask you to read back the transcript in this respect.

Q. I am really awfully sorry to have to press you, Mrs. Stinnes, but I wish you would again answer that question. A. I believe I have answered that I am not responsible for what my son Otto has said.

Tr 147 Q. But he is managing the business and has your Power of Attorney. Do you suppose that he did not tell the truth on his examination? A. I do not suppose anything but that my son Otto can state for himself why he has answered in this way.

Q. But Otto is the manager of all your property and responsible to you. Does he not know what your property interests are?

By Mr. Mann:

Let the record show that this is a repetition of questioning, that more or less the same questions were asked by Mr. Albrecht on page 103 of the record. I can only suggest that the purpose in repeating these questions is to stall the termination of this deposition.

By Mr. Albrecht:

I think it probably should be recorded on the record at this point that we are here questioning a witness who is around 83 years of age. The witness is hard of hearing and uses a hearing device. All questions put to the witness have to be translated. The effectiveness of many questions are lost by the time the translation reaches the witness. Particularly when questions are not in brief form we have seen the witness have difficulty in keeping in mind one part of the question while attempting to answer the other. The record of this cross-examination already gives plenty of evidence of the profound difficulty confronting the cross-examiner in eliciting the answers to the simplest questions. It is therefore not helpful to have petitioner's attorney interrupt as often as he does the thread of my cross-examination, particularly not by mere objections and stereotype statements that reflect on the sincerety and integrity of my examination.

By Mr. Mann:

Let the record show that I have not noticed any occasions in which the petitioner had difficulty in remembering the questions once they were translated and put to her. I believe the answers which the petitioner has

given to the questions speak for her alertness and her ability to understand questions when properly put. If questions are perhaps inaptly put, the petitioner cannot be blamed for that.

By Mr. Wieferich,

Tr 148 I suggest we proceed with the examination.

A. My son Otto will know what he does and will be responsible for it. I can say no more to that.

Q. What proof have you, if any, that Fundus actually belongs to you? A. Because I obtained it as part of my inheritance. I, from my side, never changed anything in this regard.

Q. But have you any proof of the fact that Fundus belongs to you? A. Is that not proof enough? I must be impolite and answer by putting another question.

Q. Does Fundus exist today? A. I have also testified to the effect that in view of the manifold difficulties, for instance foreign currency regulations which were intensified under Hitler, and everything that followed hereafter - this is all contained in the transcript. My son Hugo wished that I should never put any questions regarding foreign property. I should leave this to him in full confidence.

Q. Well now, you have disagreed with Hugo and you have withdrawn your Power of Attorney from him. Now I ask you what, if anything, have you done since 1950 when Hugo could no longer bother you to get hold of the property which you say is yours, for example Fundus? A. Together with the set-up of my claim I have instructed my lawyers in the United States to examine carefully whether under the properties listed by me there was anyone listed by error. That is their task, I need not bother about it.

Q. Well, was Fundus also vested by the American Alien Property Custodian? A. As far as I know the Americans vested everything which they believed to be my property.

Tr 149 Q. And therefore you are also claiming Fundus as your property in your claim filed with the Alien Property Custodian? A. Yes, based on my inheritance.

Q. Well, what was the value of Fundus that you are claiming in your last claim filed with the Alien Property Custodian? A. This is contained in the claim.

Q. Well, I suggest that you look at your claim and tell me what the value of Fundus is that you claim? (Claim presented to witness) A. This is the first claim of 1947.

Q. Mrs. Stinnes, I am afraid you have been mis-informed. The date on the upper left hand corner is the date of the form you have filled out. But if you will look on the third page I think that you will find that you have signed that claim on February 3, 1955 and that is your last claim. A. Where is the question about Fundus, I am supposed to answer about Fundus?

Q. Mrs. Stinnes, the only reason I am troubling you with the claim is that you said you claimed property of Fundus and that was indicated in the claim. So I have asked you to point out to me where the claim for the Fundus Property is included in the claim?

By Mr. Mann:

Let the record show that the witness is being asked about a document that was drawn up by lawyers. It is a lawyer's document and she may have some difficulty with it.

By Mr. Albrecht:

Well, we will give the witness all the time she requires.

A. That is included in the paragraph 3 of Supplement A if I understand English correctly.

Q. Well, now, you said that Dr. Brunner was managing Fundus for your husband, did you not? A. Yes.

Tr 150 Q. And he continued to act as your manager, is that your theory? A. Yes.

Q. Have you ever communicated with Dr. Brunner since the death of your husband about the affairs of Fundus? A. I believe no, I left this to my son Hugo.

Adjourned at 5:20 P.M. September 13, 1955.

Tr 151 Mr. Albrecht Continuing the Cross-Examination on September 14, 1955 at 3:00 P.M.

Q. Mrs. Stinnes, we were still talking about Fundus. You see, what I would like to find out from you is, how will you prove to anyone that Fundus belongs to you, as you say it does? A. I have instructed my lawyers, the Germans as well as the Americans, to examine all these matters thoroughly.

Q. Well, have you given them any documentary evidence of any kind whatsoever? A. I have left everything to them.

Q. Has Otto given your German or American Attorneys any written proof? A. You must ask him this yourself.

Q. So what you say is that you filed a claim in Washington for the return of Fundus property without having any proof and relying on your attorneys to find some proof. Is that a fair statement? A. Fundus belonged to my inheritance, and my son Hugo, as I stated before, did not give any information to me for a number of years on the foreign property. Therefore it seemed to me the best to leave this to the lawyers.

Q. Well, forgetting about Hugo for the moment. Have you at any time had anything in writing, like an entry in a book, or a statement that would prove your ownership of Fundus? A To find this out I leave it in full confidence fully to my various attorneys.

Q. Well, is your answer then, you don't know? A. I am supposed to disregard my son Hugo. How shall I say something about matters which he did not inform me about? How should I have any files?

Tr 152 Q. Well, I only wanted to be helpful You stated your husband was the owner of Fundus and therefore you inherited what he owned. So I ask you, before Hugo came into the picture, what did you ever see in the way of anything written that proves that you are the owner of Fundus? A. I am sorry I cannot say any more than what I have said. Will you please confer with my attorneys.

Q Can you tell us whether you have any proof of any kind whatsoever, that would prove to this court that you have succeeded to your

husband's alleged ownership of Mira? A. Being his heir I succeeded him automatically, I need not have any proof for this.

Q. But can you point to any statement of what your husband owned and which you inherited that includes Fundus and Mira? A. I believe I have already pointed to the fact that I, as well as the Corporation, have lost the largest part of our records through enemy action.

Q. But Mr. Unger has testified upon the deposition which Mr. Wieferich and I took two years ago that in a fire at Muelheim a certain safe containing financial papers was not destroyed, and as there were available to him also papers outside of the country or elsewhere and certain card records, that he was able to reconstruct financial records and file tax returns with the German government and other returns required by the Allied Military Government. So I would like to suggest to you that if it was possible to reconstruct financial records and to file tax and other returns, then it must be possible to locate somewhere in your files a list of property which your husband owned and to which you succeeded as his heir. I wish, therefore, you would tell us whether such a list is in existence and that will show us your ownership, your claim to ownership today of Fundus and Mira. A. To say one word to Mr. Unger's testimony. I should like to point out that this could only refer to the German property and that foreign property which had already been listed in my tax returns, but not to that foreign property which I have already designated as camouflaged property. Mr. Unger had nothing at all to do with this and also the finance department and the tax department which was managed by

Tr 153 Mr. Soeller had nothing to do with this. I would be very glad if the gentlemen would find anything now.

Q. All right then, let us assume that Mr. Unger did not know about this property. Have you then a list of the property which you claimed you owned which you did not communicate to your finance department and the director of the same? A. I do not have any list.

Q. Nor any other proof either? A. Perhaps they are going to be found, we are still searching.

Q. Well, let us take Albert Jensen. You have testified that he

was trustee for your husband and later also trustee for you. That is correct, isn't it? A. Yes

Q. And Albert Jensen now unfortunately is dead, isn't he? A. Yes, unfortunately

Q. Well now, what did you do when Albert Jensen died to try to obtain the property which you claimed he had held in trust for you? A. At that time all this rested in the hands of my son Hugo.

Q. Was a claim filed on your behalf with the executor of Albert Jensen's estate? A. I do not know.

Q. Albert Jensen is dead now for 12 years, isn't he? A. I do not know it exactly. He died shortly after the marriage of my son - I believe it is even a little more than 12 years ago. I cannot say it exactly.

Q. Well, in that time, I should assume, a distribution of Albert Jensen's property has been made among his heirs. Did you ever file a suit against any of Albert Jensen's heirs? A. No.

Tr 154 Q. Have you ever started suit against any heir of Mrs. Albert Jensen who, I believe, died a few years after her husband? A. No.

Q Well now, tell us what, if anything, you have done to obtain back the property which Mr. Jensen held in trust for your husband and for you? A I believe I stated already several times before that my son Hugo dealt with all these foreign matters - these matters too I left to him.

Q. Well, let me ask you again. You took away Hugo's Power of Attorney in 1950. What have you done since 1950 to get back your property? A. I have instructed my attorneys to devote themselves to make a thoroug h examination of these matters.

Q. When did you ask them to do that? A After 1950.

Q We are talking of a period of five years. Cannot you tell us more specifically when you instructed your attorneys? A. No, I cannot do that. Please ask the attorneys yourself.

Q. You see, I have so much trouble understanding some of your answers because you have testified with respect to matters going back decades, almost to the time of your marriage in 1895, and yet you cannot recollect when you instructed your attorneys to busy themselves with

this matter? A. I have said after 1950. I do not recollect the day and hour.

Q. Well, was it during 1954? A. No. I believe this was already before that.

Q. Was it during the last months of 1953? A. I cannot say it.

Tr 155 Q. Was it earlier during 1953? A. I cannot say it either.

Q. Was it during 1952? A. I cannot say it either, I cannot break my head about it.

Q. Did you instruct your attorneys to busy themselves with this matter or did someone do it on your behalf? A. I testified already a moment ago that I instructed my German as well as my American attorneys to examine all matters thoroughly and I rely on their report and am patient.

Q. You see, you have testified that you have had certain matters on your conscience since the death of your husband and only after your break with Hugo did you decide to relieve yourself of your conscience. I think it would be very important for the Court to know how long after 1950 you waited till you instructed your German and American attorneys. Won't you think about it once more and let us have your answer? A. I will endeavor to think about it but this takes time.

Q. Well, let us take up Asa for a moment. You stated that when the American loan was obtained in 1926, Asa was given them as a security and as there was difficulty due to Swedish law in transferring the title to the property to an American Corporation there was delivered to it in place of the title deeds a mortgage in the amount that approximated the value of Asa, is it not? A. Yes.

Q. And after, later, I believe in 1953, that mortgage on Asa was bought by Don Edmundo, your brother, was it not? A. No.

Q. From whom - who was the purchaser of Asa from Hugo Stinnes Industries, Inc.? A. I do not understand the question.

Q. Well, who bought Asa, the Asa mortgage from Hugo Stinnes Industries, Inc.? A. To my recollection the Americans did not want to retain the possession of Asa because it was of no interest to them.

Thereupon, as far as I am informed, Asa was taken over by the Edwagmij at the price of the mortgage and with this money the Americans were able to pay the corresponding amount of the debts of the Corporation.

Q. Well, is it your position that Edwagmij owns Asa today?

Tr 156 A. It should possess Asa according to these proceedings, but the Swedish have seized Asa because it was in my name and Asa was sold.

Q. Have you any information as to what action was taken that concerns you after the Swedes sold Asa? A. As far as I have learned from the Swedish press and from occasional information there must be pending a law suit between the true (wirklichen) owner of Asa and the Swedish government concerning this unjustified sale.

Q. Well, did you ever hear anything further about Asa from any German government office? A. No.

Q. You have had no correspondence with any German Government Agency since the sale of Asa in Sweden? A. No.

Q. Are you stating that as a positive fact or are you telling us that is as much as you can remember. A. I have no recollection to this, insofar it is a positive statement.

Q. Well, the only reason I asked the last question is that you have recollected so much that has occurred over the past years and you have been able to state them with emphasis, and what I am asking you about now can only have taken place in the last few years. So I ask you again whether you have had any correspondence respecting Asa with a German government agency? A. I cannot say any more than I have said before - I do not know it.

Q. Well, supposing you look at this letter and see whether it refreshes your recollection?

By Mr. Mann:

Can I see this first, please?

Tr 157 Mr. Albrecht:

No, I am not offering it.

By Mr. Mann:

Let the record show that Mr. Albrecht has declined my request to see the document which he has just shown the witness. Accordingly, until I see the document, I instruct the witness not to answer.

A. I hand this document back to you.

By Mr. Albrecht:

Mr. Mann, I am not offering any documents into the record at the moment. I am showing the witness a paper and asking her whether it refreshes her recollection. So far as I understand there is no requirement on my part to show you what I am showing the witness. If I decide to offer this document in evidence I shall, of course, show it to you before hand.

By Mr. Mann:

Again, we are not offering documents in evidence here, insofar as we can we mark documents for identification here and elicit testimony from the petitioner concerning them. I think I am entitled to see the document.

By Mr. Albrecht:

You are not offering any objection, Mr. Wieferich?

By Mr. Wieferich:

If you want my opinion I think I am entitled to see it too.

By Mr. Albrecht:

I am glad to show it to you.

By Mr. Mann:

To Mr. Wieferich only?

By Mr. Albrecht:

To both of you.

Tr 158 Q. Well now, Mrs. Stinnes, you have said that you have had no correspondence with any official German agency in recent years respecting Asa. Now, I just show you this document and ask you whether that doesn't refresh your recollection? A. This cannot refresh my memory regarding an exchange of correspondence. This is no proof

of a correspondence this is only a single information Thus far I have not heard anything further from the German government

Q. That is your handwriting on the letter I have shown you? A. There are my initials - yes, this seems to be my handwriting. I have only passed it on as it is customary for me to do with such one-sided papers and since then I have not heard anything - I have not received anything further concerning this.

Q. But you will have noted that the letter is dated March 17, 1953, and at that time your son Otto had your Power of Attorney. Doesn't he keep you any more advised of business matters than you claim Hugo failed to do? A. This was no information by my son Otto, this was an information by a German official agency and by giving his initials and my initials that disposed of the matter so far as we were concerned We were waiting to receive further information from the German government what we should do and this, according to my knowledge, they have not done so far Thus this cannot be considered to be correspondence

Q. But you replied to this letter, didn't you? A. I do not know anything about it This is no letter for me

Q. But it is addressed to you? A. This information is addressed to me This is only one sole information. This is being taken note of, initialled and passed on and then it is taken care of if it is necessary. But this is no letter

Tr 159 Q. I call your attention to your handwriting at the top of it where you said in German "passed on for the information of and possible further action to Mr Unger and Otto Stinnes " A. Yes, what does that mean? That is no proof that it is a correspondence - that was the question you put to me

Q. Well, but a further communication was received from the Dienststelle fuer Auslandsvermoegen (Agency for Foreign Property), was it not? A. I have testified already that to my knowledge I have not heard anything further.

Q. Well now, I show you a copy of a letter dated June 25, 1953, addressed to the Dienststelle fuer Auslandsvermoegen (Agency for

Foreign Property) and ask you whether that would appear to be the answer to the letter from the Dienststelle. I also ask you to look at this photostat of another letter from the Dienststelle fuer Auslandsvermoegen dated June 29, 1953, and ask you whether that too relates to this matter?

By Mr. Mann:

Mr. Albrecht, for purposes of identifying these documents would you be good enough to state whether the first letter you mentioned purports to be signed by or on behalf of Mrs. Stinnes and whether the second letter which you described is addressed to Mrs. Stinnes?

By Mr. Albrecht:

Mr. Mann, the purpose of my present question is merely to ascertain from the witness such knowledge as she may have of this correspondence. I intend thereupon to ask her to obtain the originals and copies of those documents so that they may be offered for the record.

By Mr. Mann:

Mr. Albrecht, perhaps the burden could be saved the petitioner if you would ask her whether she admitted that those were true copies of the originals.

Tr 160 Q. Will you tell us whether you believe these two papers I have shown you to be correspondence that passed between Hugo Stinnes o. H. and the Dienststelle fuer Auslandsvermoegen? A. This does not belong to my correspondence, it does not bear my initials. I see this for the first time.

Q. Well, Mrs. Stinnes, you are the substantial owner of Hugo Stinnes o. H., are you not? A. Yes.

Q. And I have merely asked you whether this correspondence does not appear to be the correspondence between the family partnership and this official German agency that relates to the Asa matter, the letter of which you admit was addressed to you and received.

A. The letter was addressed to me and the fact that I did not find it necessary to answer it proves sufficiently that I did not consider it to be a personal correspondence. This is an information which is passed between various agencies - in this case between the German agency and my firm. I did not know anything about this until this moment.

Q. Be good enough to look at this letter again and tell us whose initials appear on there to the left? A. With all efforts I cannot find my initials. This might be Mr. Unger's. I cannot judge what the other signs mean. I do not know them. You have my initials here, on the other letter.

Q. I did not mean to convey the idea that I thought your initials appeared on there. I did think they were initials of employees of the o.H. and while you have identified Mr. Unger's "U", I thought you might also be able to identify the other two initials to show who had seen the letter. Won't you look at the letter again? A. No, I am not in a position to identify those other initials, not with the best of my intentions.

Tr 161 Q. Now, if you will look at that letter again, I would like to ask you whether you know whether a letter was written on your behalf or on behalf of the o.H. to the Flyktkapitalbyran in Sweden? A. I cannot say anything else to this than I have said before, I do not know it.

By Mr. Albrecht

I have been questioning the witness with respect to some correspondence which I would now like to identify and for which I wish a search would be made and produced at the next session (1) letter dated March 17, 1953 from Dienststelle fuer Auslandsvermoegen addressed to Claere Hugo Stinnes, Muelheim-Ruhr, and bearing an endorsement at the head of the paper in the handwriting of the witness; (2) copy of a letter dated June 25, 1953 addressed to the Dienststelle fuer Auslandsvermoegen by Hugo Stinnes; (3) letter dated June 29, 1953, from the Dienststelle fuer Auslandsvermoegen addressed to Firma Hugo Stinnes; (4) copy of a letter dated July 6, 1953, addressed to the Flyktkapitalbyran, Stockholm, by Hugo Stinnes.

Q. May I hear from you at this time who the partners of Hugo Stinnes o.H. are and what their interests in the firm are? A. The partners are I myself and my son Otto. Am I obliged to answer to such internal question? These are purely internal questions, what do they have to do with this complex?

Q. Well, let me make it easier for you. My real interest in asking you is to establish definitely for purposes of the record your predominant interest, if such it is, in the family partnership. Can you reply, therefore, to my question by stating that all interest other than your own, whatever they may be in the family partnership, represent only a small minority, could you say that? A. I possess over 50% of the Corporation.

Tr 162 Q. Well, I am afraid that that will not satisfy me. Can you make a better statement than that? A. My son Otto is in possession of 15%.

Q. You see, when Mr. Wieferich and I took Otto's deposition some years ago he testified, I believe, that at that time both he and his brother Hugo were the owners of approximately a 15% interest each, more or less. Was that an accurate statement? A. Yes, I just confirmed the same.

Q. Well now, I think you have stated that you still are the owner of an interest in the Giesemann coffee finkas, have you not? A. I have testified that I had been in possession of 50% - as far as I know - of the Giesemann plantation.

Q. We are not clear whether you still claim to be the owner of 50% of the coffee finkas of Mr. Giesemann? A. De facto, yes.

Q. You mean, I suppose, de facto as contrasted to de jure, is that so?

By Mr. Mann:

Mr. Albrecht, since those are legal terms, perhaps you could explain them so that the witness can understand what de jure means.

Q. Well, Mr. Mann is concerned as to whether you understand the question I have put. Let me put it another way. As you have stated that you were the de facto owner, I merely want to know whether you also have, or possessed, of legal ownership to a 50% interest in the Giesemann finkas. A. Certainly were, respectively was. At this opportunity I refer to the conversation which I had with my sister-in-law Elsa Wagenknecht I believe in 1949. This is all in the transcript. Thus

I cannot know in what respect my sister-in-law may have failed in the meantime in the discharge of her duties as trustee.

Tr 163 Q. But I think - I thought you had testified that you saw your sister-in-law in Mexico in 1951? Isn't that correct? A. Seen for the second time, I testified.

Q. Yes, but just to keep the record straight, I think you testified that you have seen her twice since the war - in 1949 when she visited you at Buehler Hoehe and in 1951 when you went to Mexico to see her. Does that correspond with your recollection? A. All this is contained in the transcript. May I ask you to read back the transcript.

Q. But you see, we were in doubt as to your testimony because just a moment ago you said you spoke to her in Mexico in 1949. A. In Mexico in 1949? This is purely an error, a slip of tongue which may happen to everybody. 1949 in Germany and 1951 in Mexico.

By Mr. Mann:

Pursuant to Mr. Albrecht's request we have had a certified translation made of the will which has been marked for identification as Petitioner's Exhibit Number 1. I will ask the Consul to be good enough to mark the translation as Petitioner's Exhibit Number 1a. Moreover Mr. Albrecht requested a copy - that the Power of Attorney which Mrs. Stinnes executed in favor of her son Otto be produced. Mr. Albrecht, I show you the original of that Power of Attorney and I give you a photostatic copy for your files. After you have compared the original with the photostat, may I have the original returned. Thank you.

Mr. Albrecht, at this point your cross-examination has consumed five full sessions and a portion of another. I wonder if you would be good enough to give us an estimate of how much longer you expect that your cross-examination will continue.

By Mr. Albrecht

I would be very happy to do so, also for my own information. It is, of course, apparent that the effort to elicit facts from the witness is difficult and therefore more questions are necessary than if we had a younger witness on the stand and one who was conversant with the English

language. I shall, of course, proceed as quickly as I can and as soon
Tr 164 as I am able to make some augury as to when I shall complete my cross-examination, I shall be glad to advise you.

Mr. Mann:

Thank you. I only ask that you bear in mind that the petitioner is an old lady of 83 years and whose health is very frail. While we want you to have every opportunity cross-examination, I ask that you be good enough to cooperate with us to terminate this deposition at the earliest practicable date.

By Mr. Albrecht:

I think perhaps I should recall to you at this point that when we first conferred in Washington relative to the taking of this deposition, we recognized the fact that we were dealing with an elderly person whom we would not be able to interrogate in English, who was furthermore infirm and who frequently had to have recourse to treatments in sanatoria and hospitals. We further recognized the fact that we might not be able to examine the witness for more than one hour or two a day. This pessimistic view has been confirmed by events and moreover we have had to omit several daily sessions at the request of the witness and perhaps it is well for me to record at this time the proof of my desire to complete this examination as quickly as possible. It was at my suggestion, I believe, that the request was made to the Consul General to accord us the privilege of continuing our examination last Saturday a week ago and also on the following Monday, which was Labor Day; on both of which days the Consulate was closed. You may rest assured that I shall continue in my desire to close my examination as quickly as possible.

By Mr. Mann:

Thank you. I am very happy to know that we will have your co-operation in bringing this deposition to a close and I take it from what you have said that you will not unnecessarily prolong the matter by questioning the petitioner concerning irrelevancies.

Adjourned at 5:35 P.M. September 14, 1955

Tr 165 Mr. Albrecht Continuing the Cross-Examination on September 15, 1955 at 3:15 P.M.

By Mr. Mann:

With respect to Mr. Albrecht's statement concerning why Mrs. Stinnes was interrogated on the Saturday before Labor Day and on Labor Day, both of which are holidays for the consular staff, I think the record should show that such was done with the hope that we might terminate Mrs. Stinnes' deposition in time for Mr. Albrecht to go to New York for his son's wedding.

Q. We were talking of your visit to Mexico in 1951. You stated that you had to wait some weeks, I believe, until Mrs. Wagenknecht came back from the Argentine. Where did you stay in Mexico to await Mrs. Wagenknecht's return? A. First I was in the house of Mrs. Wagenknecht which was being run by her foster daughter Irmita, until for the last weeks I stayed with my friends Giesemann at the finkas.

Q. Your friend Giesemann's finkas were located at Chiapas on the Guatemala border, were they not? A. Yes.

Q. That was Joaquim Giesemann - isn't that his name? A. Yes.

Q. And am I correct in recollecting that he was at school with your son Otto in Germany? A. I had never heard of this before today - he was a good friend of his.

Q. And Otto likewise has visited Mr. Giesemann in Mexico, has he not? A. Above all Otto has visited the father Giesemann, seeing in him his second father after the loss of his father and was a very

Tr 166 intimate friend of the old gentleman.

Q. Now, when you stayed with Mr. Giesemann in Chiapas, didn't you hear from him that he was the sole owner of the coffee finkas? A. I heard from him to my dismay and regret that my sister-in-law had sold the share she held in trust in the finkas to Joaquim Giesemann.

Q. But you have said, have you not, that it was your husband who first bought an interest in the Giesemann finkas? A. Of course, this is

the truth. Mr. Giesemann, the old gentleman, came into difficulties through his ownership of foreign property during the First World War, like many other Germans. Then he approached my husband whether he would be willing to assist him and offered him 50 % of his plantation property in Mexico.

Q. When was that, may I ask? A. During the First World War, between 1914, and 1918, how shall I know this still today.

Q. Well, what did your husband buy from Mr. Giesemann, was his name put on record as owner of the finkas? A. I cannot say anything in detail about this, I do not know it.

Q. Well, you stated a few days ago that you were still the owner of a half interest in the Giesemann finkas. Do you want to correct that answer now? A. When the question was put to me I did not think of this occurance. I was mistaken - it is only human to err.

Q. Well, I take it then you have not filed a claim with the Alien Property Custodian that relates to the Giesemann finkas, or have you? A. I cannot say it at the moment. Under all circumstances I have the claim, if not to the finkas then to the money which my sister-in-law has received. This remains the same for me.

Tr 167 Q. Well then, it is now over four years ago, isn't it, that you have heard that Mr. Giesemann is the owner, the sole owner of the finkas, isn't that so? A. The sole owner? I cannot say that. He works together with his brother. He owns that part for which my sister-in-law was trustee.

Q. Well, let me put my question another way. You have known for four years that your sister-in-law sold her interest to Mr. Giesemann, isn't that right? A. Yes.

Q. Have you made a demand against your sister-in-law to be paid the proceeds from that sale? A. I have said just before that I do not recollect the details at the moment.

Q. Well, let me ask you, did you instruct any attorney in Mexico to bring suit against your sister-in-law to recover the proceeds from this sale? A. To my knowledge no - not in Mexico.

Q. Did you have any correspondence with your sister-in-law about the subject of the sale by her of her interest in the Giesemann finkas. A. I have not had any correspondence at all with my sister-in-law since 1951. I do not recollect any letters. I would like to add something. After separating from my sister-in-law in Mexico, as I have testified before, there was no reason for me to exchange any letters with my sister-in-law

Q. While you were living in Mexico in Mrs. Wagenknecht's house who was there besides Irmita? A. Irmita's husband.

Q. Who else? A Nobody else.

Tr 168 Q. I take it you have forgotten that Mrs. Hermann was there, Mrs. Nora Hermann, do you remember that? A When I was residing there? I stick to my statement. My sister was not there in the house together with me in those days, before I moved to Chiapas.

Q. I did not ask you who was in the house before you went to Chiapas. I asked you while you were in Mrs Wagenknecht's house, wasn't there anybody else besides Irmita and her husband? A. After my return from Chiapas, I believe, I do not remember it exactly, I have only stayed for one night in the house of my sister-in-law. And since, to my great surprise, I was met at the airport by my sister-in-law and my sister, of whose presence in the United States and Mexico I did not know anything until that time, it may be that she also lived at the house of my sister-in-law.

Q Well now, let us turn to the subject of your father I think you have testified that he had no confidence in the business ability of your brother Don Edmundo and I remember that you gave us an example of his incompetence; is that not so? A. I remember that I said that my brother, when settling a matter in Paris with which my father had entrusted him, he proved himself to be an incapable representative of his

Q. Well, I think you also had said at one point that your father had given him substantial funds or securities to help him in the business and that Don Edmundo had lost them, is that correct? A Yes.

Q. And so, having no confidence in his son, he appointed your husband executor of his will with you as his successor. Is that correct? A. Yes, all this is contained in the transcript.

Q. Do you remember how much Don Edmundo had received from his father to help him in his business? A. No, I was never so tactless
Tr 169 to ask my father about this. This was no business of mine - this was his sole affair.

Q. But you must have learned of that when you succeeded your husband as executor of the estate as you said you did. You must know something about it. A. I can only testify what I have said before.

Q. Well, do you remember whether your father gave Don Edmundo these funds or securities as a loan, or did he give them to him outright? A. To this I can only say that my father several times spoke very angrily that he never received any interest from his son and also no information which he desired to receive. We called Don Edmundo in the family on account of his silence and the many admonitions because he neglected to write, the great silent one - that can be said at this opportunity.

Q. Well, let me see if I can help you. Don Edmundo was called for a while the great silent one, but wasn't that after his terrible accident when he suffered a broken head so that for long periods he could not attend to business, do you recollect that? That was only in 1932 or 3, wasn't it? A. No, we always called him the great silent one.

Q. Now, speaking to you as a successor of your husband as the executor of your father's and mother's estate, don't you know that when your brother received this large amount of securities from your father he agreed to pay, and did pay, the old gentleman 180,000 Marks every year toward his support? A. The last part of the question is not clear to me so that I would like to ask to give me the meaning of it because I do not understand the sense of it.

Question re-read to witness.

A. To my father? I never heard anything of this.

Q. But the books of your father's estate show that Don Edmundo was paying him a pension or Leibrente of that amount every year, don't

they? A That is the first thing I hear about it

Tr 170 Q. Were you very active as executor of your father's estate? A. My husband settled this My father died three years before my husband. At that time all this had been settled by my husband. I did not deal with the details and I did not have to do this I only became the successor in 1924. Then the estate was entirely settled

Q. Yes, you only succeeded your husband as executor in 1924. But it is a fact, is it not, that the administration of the estate of Consul Edmund Wagenknecht and his wife is still not terminated? A. To my knowledge it was finished - I cannot say any more about it.

Q. Well, Mrs Stinnes, you don't seem to know very much about this I would like to suggest that the reason you don't is that someone else acted as executor when your husband died Could you tell us something about that? A. No, I cannot say any more than I have done.

Q. Mrs Stinnes, you have also testified, I believe, that it was your husband who suggested to your father that in view of the difficult economic condition in Germany, he should transfer his securities to the Hamburg firm who would agree to pay him an annual pension Is that correct? A. He offered to guarantee sufficient funds for the support of my father and his wife until his death.

Q. Was such support paid to your father and mother, and if so by whom? A Of course it was paid, and certainly in a most generous way, as was the habit of my husband, and executed to my knowledge later on, after the formation of the Edwagmij, via the Edwagmij. The agreement itself was concluded more than 35 years ago.

Q I may be wrong, but I thought you had testified a few days ago that the arrangement was made with the Hamburg firm So I ask you,

Tr 171 is it the Hamburg firm that made the payments to your father and mother? A To my recollection all this can be read in the transcript, because I testified first the Hamburg firm, Hugo Stinnes A.G. fuer Reederei und Ueberseeschiffahrt, and later on, as I just said, after the formation of the Edwagmij the agreement was carried out by the Edwagmij.

Q. What was the annual amount paid to your father and mother? A. I never asked my husband about this. It would have appeared to be improper and tactless towards my father.

Q. Now, you stated that the reason your husband suggested to your father that he exchange his securities for an annual payment was so that in view of the inflation then raging in Germany he would not one day stand there penniless. Is that correct? A. Yes.

Q. I am afraid that I cannot understand that. The only way to protect yourself in an inflation is to have securities while money will depreciate and evaporate. So how did that protect your father? A. It did protect him, this proves that my husband's actions were right

Q. Where will we find proof of this alleged agreement between your father and your husband that resulted in an annual payment to him? Would the books of Hugo Stinnes o. H. reflect any part of that? A. I do not think so.

Q. I would like to suggest to you that you are mistaken in your recollection of this transaction. I would like to suggest to you that what you are thinking about is of the transfer of the securities owned by your husband's mother to the Hamburg firm. Isn't that what you have in mind?

Tr 172 A. It is said in the transcript that my husband concluded a similar agreement with his mother for the same reason. I can only ask to read the transcript.

Q. Well, tell us, if you are able, what assets were in the estate of your father and mother when they died? A. I do not recollect this any more.

Q. But surely, Mrs. Stinnes, you must know something of what your father left when he died? A. I am sorry to have to say that you are mistaken. I stand 100% to my previous statement.

Q. But you have testified that you were named executor of the estate and you have several times testified that throughout your married life with your husband he advised you of all important things in great detail. Now surely you must know something about the estate that your father and mother left?

By Mr. Mann:

Is there a question?

By Mr. Albrecht:

If it is not I will add: Is that not so?

A. No, I can only say I stick to what I have said. And I have never said that my husband informed me about all matters, he did not have the time to do so. In addition, these were no business matters of the Corporations, but a mere personal matter between my husband and my father. I have said once before that I did not concern myself with such matters, this would have been against my sense of proprieties.

Q. I did not bring up business matters. I brought up the estate of your father. That was not a private affair between your father and your husband. Weren't you a child of your father who was going to inherit part of the estate? A. I stick to my statement. For me it was

Tr 173 and still is a pure personal matter which my husband arranged with his father and his mother. I had nothing to do with the settlement of the estate, all of this my husband has attended to.

By Mr. Mann:

As Mrs. Stinnes explained she has had the care of the Doctors today and for that reason I would like to ask her at this point if she feels like continuing.

By the witness:

I can continue for another half hour.

Q. Well, let me ask you, please tell us what you inherited from your father? A. With respect to this I can only say, I have no idea what I have inherited in regard to money. I have inherited from my father's property, of the family home in Wiesbaden, 30%. I do not know anything further.

Q. And I take it that other children of your father also had rights with respect to the family home in Wiesbaden, isn't that true?

A. As far as I can recollect my sister Nora also inherited 30%. The other 40% I believe were taken over by the G. m. b. H., but I cannot say that under oath. I am not certain about it.

Q. And didn't the heirs agree also to give your brother Don Edmundo and his wife certain rights to live in the family home in Wiesbaden? A. No, no rights. I arranged for my sisters and brothers to live in the family house out of free will, because I desired to have peace in the family, until I stopped this use of the house because this my intention was being mis-used.

Q. Well, when was the Wiesbaden home no longer used as a residence by the children of your father? A. I must make an effort to recollect - I cannot say it. I can only add that my husband, with the agreement of all my sisters and brothers, rebuilt and enlarged the house at his own expense after 1922 in order to use it, so to say, as a place for business conferences.

Tr 174 Q. Well, after 1922 your brother Don Edmundo and his wife did live in the house from time to time, did they not? A. Whether the expression from time to time is correct, I cannot say. It might have been that both were sometimes staying there--they came to Europe very seldom. I arranged for them to have two rooms, one living room and one bed room, and they were residing there as my guests.

Q. I don't understand why you stressed the word "my." Didn't your sister Nora have equal rights with you? A. My sister Nora, as far as I can recollect, also lived there as my guest - that means I paid for the household expenses.

Q. But the fact is that your brother Don Edmundo had the right to live in that house for the balance of the 1920ies and 1930ies, isn't that true? A. If one speaks of a right, one means a legal right. He did not have a legal right. He, as well as the other sisters and brothers were living there thanks to my courtesies and my way of thinking. I cannot say when my brother and my sister-in-law were living there. Between 1930 and 1937, I think I testified on this before, my brother was mostly living in Asa, where I had offered him to reside.

Q. I don't wish to detract from your generosity, but I would like to get the fact straight. Isn't it a fact that it was your husband who made

a proposition to the community of heirs according to which he took over the property of the estate of your father for the purpose of setting up a family home to which all members of the family could repair. Is that not so? A. Possibly. I do not recollect this.

Q. Don't you remember that your husband wrote a letter to Don Edmundo about that plan to create this family home for all children? A. I am sorry. I do not remember this.

Tr 175 Q. And don't you remember that in that long letter of your husband's, that at the end of that long letter of your husband's you also wrote to Don Edmundo? A. May I ask when this letter was written?

Q. I would ask you to recollect whether such a letter was not written after your mother too had died? A. I do not remember this. I can only tell the truth.

Q. I ask you to look at this old, this photograph of an old letter and I ask you whether you recognize that writing? A. As far as it is possible to read anything this seems to be the handwriting of my husband. But what this letter contains other people may find out.

By Mr. Mann:

Mr. Albrecht, do you have the original of that letter with you?

By Mr. Albrecht:

I have not. I am just asking her now to see whether she can recognize the handwriting and she testified that she recognized her husband's handwriting. That is all I wanted to accomplish at this moment.

Mr. Mann:

Let the record show that the photocopy which is available here and which has been shown to the petitioner is completely illegible.

By Mr. Albrecht:

Perhaps illegible to you, Mr. Mann, I think this is a more correct statement.

By Mr. Mann:

I understand that the photocopy shown the witness is clearer then the one which I have seen, may I see it?

Mr. Mann examined document handed to witness.

By Mr. Mann:

Mr. von Papen, who is familiar with the German language finds the document illegible.

Tr 176 Q. Just one more question, Mrs. Stinnes, you gave me the answer that I wanted, that the letter appeared to be in your husband's handwriting. Now, will you look at the bottom of that letter and there is some writing in a different hand. Can you identify that handwriting? A. This looks like my handwriting, but I cannot find out what this means. This is illegible even to me.

The witness was excused.

By Mr. Mann:

Mr. Albrecht, you have now had six sessions and a portion of another which is more than the combined time of my direct and Mr. Wieferich's cross-examination. I ask you whether at this time you could estimate how much more time is going to be required by your cross-examination. My purpose in asking this is that, as all of us can see, the examination is affecting the health of Mrs. Stinnes.

By Mr. Albrecht:

Mr. Mann, I think it was anticipated by all of us that the perpetuation of the witness' testimony may prove a hardship for her. I do not see how we can protect her from the emotional and other upsets which she undoubtedly will suffer as a result of some of the questions that I must address to her. No one regrets this situation more than I, but I am afraid that I have had nothing to do with bringing Mrs. Stinnes into this picture.

By Mr. Mann:

Can you estimate how much additional time will be required for you to complete your cross-examination?

By Mr. Albrecht:

I need not tell you that the length of my effort here will be determined to a large extent by the ability to extract the desired answers out of the

witness. It seems to me this examination has given plenty of proof of the long drawn out process that has and is confronting me of ascertaining and achieving what I require. There is no reasonably accurate estimate that I can make under these circumstances and the only answer that perhaps I am able to give at this time is that I shall certainly go through all of next week. I hope that it may be terminated before then and I trust it will not extend beyond the end of next week.

By Mr. Mann:

Thank you.

Tr 177 Adjourned at 5:30 P.M. September 15, 1955.
Mr. Albrecht Continuing the Cross Examination
on September 16, 1955, at 2:30 P.M.

The Witness did not appear until 3:00 P.M.

By Mr. Mann:

Pursuant to your request of September 14, 1955, I hand you the following documents

(1) The original of a form letter addressed to Claere Hugo Stinnes by the Agency for Foreign Property, dated March 17, 1953;

(2) The file copy of a letter addressed to the Agency for Foreign Property by the Hugo Stinnes o.H. dated June 25, 1953;

(3) The original of a letter from the Agency for Foreign Property addressed to the firm Hugo Stinnes, Muelheim-Ruhr, dated June 29, 1953;

(4) and the file copy of a letter addressed to the Flyktkapitalbyran Stockholm, Sweden, by the Hugo Stinnes firm dated July 6, 1953

That correspondence came from the files of the Hugo Stinnes o.H. I have returned the photostats which you permitted me to have in tracing the correspondence and I ask that you be good enough to let me have the originals and file copies back at your earliest convenience.

I hand you a photocopy of the notarial protocol of December 18, 1929, concerning the settlement with Claerenore Soederstroem, then Stinnes. We have not the original of this document and assume that it is deposited with the Notary

I hand you the file copy of the estate settlement dated March 3, 1927, of Hilde Fiedler, then Stinnes.

I hand you the following documents:

Mrs. Stinnes definitive property tax return for the years 1925 and 1926 and amended definitive property tax returns for the same years;

Property Income Tax Declaration of Mrs. Stinnes for 1925 and 1926 and Income Tax Return for 1925 and 1926.

File copy of Income Tax Declaration 1927 and Income Tax Return 1937;

Property Tax Return for 1928

Income Tax Declaration 1928 and Income Tax Return 1928;

Tr 178) Income Tax Declaration 1929 and Income Tax Return 1929;

Income Tax Declaration 1930 and Income Tax Return 1930; and amended Return and Declaration;

Income Tax Declaration 1931 and Income Tax Return 1931 and Definitive Return 1931;

Income Tax Declaration 1932 and Income Tax Return 1932;

Income Tax Return 1933;

Income Tax Declaration 1934 and Income Tax Return 1934;

Income Tax Declaration 1935 and Income Tax Return 1935;

Property Tax Declaration 1935;

Income Tax Declaration 1936 and Income Tax Return 1936;

Income Tax Declaration 1937 and Income Tax Return 1937;

Income Tax Declaration 1938 and Income Tax Return 1938;

Income Tax Declaration 1939 and Income Tax Return 1939;

Property Tax Declaration and Property Tax Return 1940;

Property Tax Return 1946 and amended Property Tax Return 1946;

Property Tax Declaration 1949;

Property Tax Declaration 1953;

Income Tax Declaration 1953.

I believe that the production of the original document or file copy, as the case may be, discharges Mrs. Stinnes' obligation to produce. However, Mr. Albrecht, as a convenience and in an effort to expedite

the termination of this deposition, we have attached a photocopy to each of the tax returns and declarations which, if you desire, you may have. I take it, however that the cost of making such a photocopy would be a proper charge for your client But that is a matter we can settle when we have our accounting on numerous matters pursuant to the terms of the Court Order. There still remain to be produced a statement of Mrs. Stinnes' participation in the Hugo Stinnes o H and a recent balance sheet of the o. H I regret to advise that the books of the o. H. for the period of the 1920ies do not exist and accordingly we are unable to
Tr 179 furnish such a statement for 1924 and 1926 as was requested.

By Mrs. Stinnes:

I should like to add for the transcript that I did not feel very well yesterday and therefore some statements may have been not as clear as otherwise they might have been.

Q Mrs. Stinnes, when you offered Exhibit 13 for the record you made a statement, I believe, that it was your custom to write family letters or important communications in long-hand and that then a type-written copy would be made of the same for the record. Is that correct?
A. This has been initialed by me.

Q I am afraid that you did not understand my question and I shall therefore ask Miss Koerner to read it to you again.
Question re-read to witness.
A. Yes, this is a copy

Q And that was done many times by you, was it not? A. In the course of the decades, certainly

Q And that was also the practice in your family generally?
A I do not know that

Q Well, did your husband do the same thing in his time? A. I really cannot say that any more.

Q Well, you did note, did you not, that he wrote many letters in long-hand? Don't you know that? A My husband? I really cannot say whether it may be called many letters, I don't know it In former times there were no secretaries

Tr 180 Q. Well, before one had secretaries, how did one keep copies of letters for the files? A. I would have to recollect that. I don't know it at the moment.

Q. Well, let me help your memory. Wasn't it customary years ago to place letters that were written in a letter press in order to keep the copy in a book? Do you remember that? A. The question was, what my husband had done in order to copy his letters - that I don't know.

Q. You want to give the answer, do you, that you don't know that in your husband's time copies of letters were kept by means of a letter press copy? Do you really mean to say that? A. I want to say that I do not know how my husband has proceeded.

Q. In your letter to your son Hugo you refer to a Sonderhandschreiben which you sent to him. Have you found a copy of that letter and brought it with you?

By Mr. Mann:

There is an outstanding production request on the part of Mr. Wieferich for that letter. We have made a search for the letter and have found a copy. It is in the process of being put into photostat so that we can produce it here.

Q. I wish you would look at Exhibit 13 again and tell us why your initials appear in the middle of the text, if you can? A. I don't know it myself why I have put these in the middle of the letter at the time.

Q. I would like to suggest to you why your initials appear in the middle of that letter. Isn't it a fact that you put those initials on that letter head before that text was written. Isn't that so? A. To this I can only answer, no.

Tr 181 Q. But that is a practice that you have pursued from time to time in the past, is it not? First you put your signature on a piece of paper and then you let other people type the necessary above your signature. Isn't that true? A. Please repeat the question.

Question re-read to witness.

A. This would have involved signing something in blank -- it was not my habit to do this.

Q. Well, Mrs Stinnes, I wish you would look at your Exhibit 8 again and look at the last paragraph of that letter and tell me what the meaning of it is? A. Yes, what does that mean?

Q. You have just testified that you were not accustomed to signing things in blank and I have called your attention to the last paragraph in your letter to Hugo which is numbered Petitioner's Exhibit Number 8, and I ask you whether that doesn't show that you signed some papers in blank with the request that they be filled out? A. This in no way contradicts my afore statement. I said "my habit" -- exceptions prove the rule, and this in fact must have been a very exceptional case.

Q. Well then, you did sign documents from time to time in blank, did you? A. This may have happened in seldom, rare cases

Q. Well, look at Exhibit 13 again and tell me whether that is one of the rare cases where you signed a piece of paper in blank? A. I have not signed my name, but have called myself "your mother." A blank signature "your mother" -- I don't know anything about this.

Q. I did not ask you, Mrs. Stinnes, about the typewritten phrase "Diene Mutter," I asked you whether you put your initials on that sheet of paper before the typewritten script was put on it Is that one of the exceptional occasions to which you referred? A. I believe to have

Tr 182 answered this question more than sufficiently I cannot say any more about it

By Mr Albrecht

The witness has once denied that she placed her initials on this sheet of paper (Petitioner's Exhibit Number 13) before the typewritten matter was written on the same. In an effort to spare the witness further questioning on this letter I would now like to request that the original of this letter be included rather than a photostat in the record of these proceedings so that, if necessary, we may submit the same to a handwriting expert

Furthermore, I would like to call your attention to the fact, Mr. Mann, that the translation submitted of Petitioner's Exhibit Number 8,

that the last paragraph of the translation submitted of Petitioner's Exhibit Number 8 - is defective and misleading and I therefore would request again that before this deposition ends that certified translations be submitted of all translations heretofore submitted, so that I will not be prejudiced in my cross-examination of the witness.

By Mr. Mann:

Mr. Albrecht, Mr. von Papen has compared the translation with the Exhibit and he advises me that there is a mistake in the translation, that the word "signature" should be "text." I should like to point out that any translations which have been put in cannot be mis eading for you because you have demonstrated that you have a knowledge of the German language. I can only say that any mistake in the translation is made inadvertently and you, of course, are free to put in translations where you think ours are wrong. In any case, the Exhibit will speak for itself and not the translation. With respect to your request for certified translations I would like to call your attention to the fact that our translations have been made by Mr. von Papen who certainly has demonstrated in the taking of this deposition that he is familiar with the German and English languages. If you would like a written statement from him to that effect we will gladly furnish you with one. I believe when you compare the one certified translation which we gave you, namely the translation of Exhibit 1, with the other translations which we have put in the record, you will be thankful that we have given you only one certified translation. We will be glad to put the original of Petitioner's Exhibit Number 13 in the record.

Tr 183 By Mr. Albrecht:

Mr. Mann, I hope that no remarks that I have made have suggested any attempt to mislead. I am conversant with the problems of translations and realize that mistakes are apt to creep into them. I have heard your statement that Mr. von Papen has prepared--am I correct in that--all the translations from Exhibit 4 on that were submitted by you in the record. I accept that statement. I accept Mr. von Papen as

qualified, and I accept that fact as satisfying my request for certified translations.

By Mr. Mann:

Mr. Albrecht, thank you. We will put in a correction of the translation of Petitioner's Exhibit Number 8.

By Mr. Albrecht:

While we are on the subject of translations, if I may advert to the certified translation of Exhibit Number 1, which I admit is not on a par with the translations submitted by Mr. von Papen, from the same it appears that the first two pages of the translation are of documents that have not been submitted as part of Exhibit 1. They probably don't add anything to the record and I don't request their submission. You will note, however, that the translation appears doubtful, at best, in certain respects and on page 2 I call your particular attention to a reference to the testatrix of Mrs. Dunlop Wagenknecht. Petitioner's testimony has already pointed out that Mrs. Dunlop is now Mrs. Nora Hermann, her sister. This lady is still very much alive and I don't understand what the reference to the testatrix may be. On the same page, however, there appear the statement of Judge Thomas and Judge Levyeloh to the effect that the value of the inheritance will be reported within six months time. I wonder, therefore, whether reference to the records of the Court, where the original will of Petitioner and her husband were found, will not reveal some sort of document that will give us the detail of the estate.

By Mr. Mann:

Mr. Albrecht, I believe the translation to which you refer concerns the Notary's protocol of the reading of the will. I have the photostat of that protocol and will be glad to make it available to you, or even to put it in the record if you so desire. I could not see that it served any useful purpose. However, it is available if you care to see it. With respect to the statement that the value of the inheritance is to be reported within six months, I can only say that we have made inquiry of the Court as to whether the court's file contains any indication that such was done and

Tr 184 we are advised that there is no such indication in the court's file. Conceivably there might be other files in the Court which would contain such an estimation or appraisal. We have, however, been unable to locate it. However, since the Court's files are equally as available to you as to us, I would invite you to have a search made. I must lament the certified translation made by the Court Interpreter.

Q. Now, I showed you last night a photograph of a letter written in 1922 to your brother Edmund that was in the handwriting of your husband and to which you had added a postscript in your handwriting. Can you tell us, or remember why such a long letter should have been written to Edmund in 1922 by your husband and you?

By Mr. Mann:

I feel constrained to object to your characterization of the document which you showed the witness as a photograph of a letter. I submit that it could be a photograph of anything.

A. No, I cannot say that off hand.

Q. Well, after the death of your mother, weren't there testimentary matters to be discussed with Don Edmundo? A. That may be possible-- I don't know it.

Q. Don Edmundo was interested in the estate of his father and mother, was he not? A. As far as he eventually had to expect something, yes. I cannot say anything further to this. This was 33 years ago, how should I keep everything in my mind. May I perhaps put the question whether you or other people remember everything that happened 30 years ago or are able to say off hand what you have done or said at that time. I would advise you to ask Dr. Soeller whom you know, whether he is able to do so.

Q. Well, do I take it from your answer that Don Edmundo was disinherited by his father's and mother's will? A. I have not said this.

Tr 185 Q. Well, can you tell us what he was to receive from his father's and mother's estate? A. As far as I recollect he had received so many loans before the death of my parents from his father that that at least exhausted his potential share of the estate.

Q - Mrs. Stinnes, is that your recollection of what that will provided? A. I did not speak of the Last Will - I do not remember the contents of the will. I spoke of a fact of which my brother Edmund was certainly aware.

Q. Well, do you remember what the will - what provision the will made for the distribution of the estate among the children? A. To recollect this I would have to have at least 24 hours time to think about it.

Q. And you cannot now recollect that the will provided that Don Edmundo should receive an equal share of the estate without any diminution for prior advances? A. I believe by my previous statement I also have answered this question.

Q. So your answer is, you do not remember, is that it?

By Mr. Mann:

I believe her answer is that, if given some time to think it over, she conceivably could recollect this.

A. I have already said before that if I should be able to remember - if this would at all be possible - I would at least have to have 24 hours time to think about it.

Q. Now, I showed you last night the photograph of a letter which you and your husband wrote to Don Edmundo in 1922 and I would like to suggest that the reason your husband wrote that letter to your brother

Tr 186 was that Don Edmundo was also an executor of your father's estate. Do you remember that? A. No.

Q. Well, do you want the Court to believe that you do not know that your brother was an executor of his father's estate? A. I have testified that I do not remember this.

Q. I am afraid that I must ask for a better answer because my recollection is that you have testified that your husband was the executor and that you were named as his successor? A. Yes, I know that I have testified to this effect.

Q. Would you now like to change your answer? A. I shall endeavor to obtain the will because I do not recollect any details.

By Mr. Albrecht:

Well, I should now like to have marked as an exhibit for identification the photograph of what presumably is a letter to Don Edmundo dated April 14, 1922 in the handwriting of the late Hugo Stinnes Sr., to which is annexed a post scriptum in the handwriting of the petitioner. I would like this photograph to be put into the record subject to my exhibiting to you within the next few days the original of that document. The document therefore will be marked Wagenknecht Exhibit Number 1 for identification.

By Mr. Mann:

Mr. Albrecht and Mr. Wieferich, are we agreed that in all cases of exhibits a photostat will suffice unless as in the case of Petitioner's Exhibit Number 13 it is felt that something might turn on the original in which case, at the request of any part, the original will be placed in the record?

By Mr. Wieferich:

Satisfactory.

By Mr. Albrecht:

Tr 187 Any photostat of a document that has been exhibited and examined by the other two parties will always suffice unless there are reasons why the original should go into the record.

Q. Now, that four page letter, Mrs. Stinnes, which was written by you and your husband has been deciphered and I should like to read it to you.

"Berlin, April 14, 1922. Dear Edmund. Since I last wrote to you the dear house of the parents in the Bierstaedterstrasse has become unoccupied, and the old people who with selfless interest concerned themselves with everything that had to do with us, are no more.

Despondency and despair will not enable one to keep their memory fresh; that can be done only if, in accordance with the ideas of the old gentleman, as oft times discussed

with him. one maintains the house as the central point in which one can feel content and happy. as in the old home

Recently. in your absence. the matters relating to the estate have occupied me as executor to a considerable extent. and I must render you an account of the same.

As you know. your father had sold to you his securities worth approximately 8 millions at a price based on the Reich emergency offering (Reichsnotoffer). For that you have guaranteed him a yearly income of 180. 000 Mark. and this guarantee will cost you for the past year approximately 43. 000 Mark. In addition there is also the life insurance of the old gentleman amounting to frs. 255. 000 more or less. against which the French Government exerts claims based on the peace treaty. Perhaps we shall have to sell this claim of the estate to you so that with the support of the Uruguayan Government you will be able to show our dear friends in Paris the necessary They never hesitated during the war to accept premiums from the insured. and now are prepared to defraud the family.

Further assets are the house and contents and also jewelry which have been appraised for tax purposes and for its sentimental value. as follows:

	Taxes	Sentimental Value
House	Mark 1. 200. 000	Mark 1, 500, 000
Contents	" 44. 000	" 1, 000, 000
Jewelry	" 140. 000	" 360, 000

On the assumption that you will agree. I have proposed to the heirs residing here in Germany. who are represented by Ella and Walter. that I take over the whole thing at its sentimental value. but only if everything essential to maintain the character of the house. remained together

Tr 188 That proposal did not have altogether smooth sailing, since Walter, apparently out of fear of complaints on the part of Anna, put forward some minor objections, and even claimed some special tax consideration. But he probably realized later that he had acted foolishly, particularly since Ella from the very start had declared herself as satisfied.

Of course, despite my taking over everything, Walter can have to which he may reasonably lay claim, but for example, the most valuable and in part the newest clothes of your father, which in Claere's and Nora's opinion would give you pleasure and to which you are entitled, have been reserved for you, for example, also the fur coat.

I hope, that already in the course of the next week everything will have been settled, so that the very substantial continuing expense of the house will then fall on me rather than the estate. The form of the transfer, I think, shall be to a limited liability company (G. m. b. H.) with the name Haus Wagenknecht, of which I intend to give Claere and Nora 30% each with the proviso that later on, if no agreements to the contrary are reached, Hugo Stinnes G. m. b. H. will take over the parts of all owners upon their demise.

So long as they may live, both daughters shall feel equally at home with each other and shall be able to see their brothers and sisters there.

I hope that this idea will also suit you, so that you together with Elsa, whenever you are in Europe, may continuously have your home with the girls, and not be burdened with the necessity of maintaining a second household.

Smaller participations, such as Roesch G. m. b. H., should, of course, be liquidated.

I know that some years ago, your father gave you certain sums upon the founding of your business, which he treated as outright (vorweg) payments to you in accordance with the provisions of the law. By reason of that fact, no income therefrom appears in the papers and tax declarations. Logically, therefore, all these amounts, the sum total of which also is of no interest to me, are not part of the estate.

If at some later time, you decide out of your own free will to pay to your sisters a part of the profits from these "vorweg" funds as well as out of the securities you turned over at the rates fixed by the Reich Emergency Offcering (Reichsnotopfer), that will rest entirely with you In my opinion, I have probably held out such a hope, but with respect to the same there is no need for you to make up your mind before the settlement of the estate

There is, of course, the necessity of making an overall payment, including Ella, who wisely or for other reasons has thus far conducted herself without reproach in money matters. I shall gladly place the Hamburg firm at your disposal for such special payments as you may wish to make

Tr 189

It is fortunate that you took over the securities in April 1920, otherwise millions would have been payable in inheritance taxes on the market quotations of the securities, most of which today have declined in price and would not have covered the inheritance taxes, since the market prices on December 23 were 20% higher than they are today

Do please tell me by means of an added word to a cable that you are in accord with my proposal.

Thomas, Judge Leveloh and I believe that everything has been done to protect the interests of the heirs

For the past few days Nora is here to arrange for the decorating of Haus Harteneck. Tomorrow evening she and her husband are going to Wiesbaden with Edmund, who has completed his studies with A in every course and has received his doctor's degree.

Claere and I will leave for Wiesbaden already tonight where we shall meet the children.

Sincere greetings from us all and Auf Wiedersehen real soon,

Your Hugo.

P.S. You two dear ones,

Despite much good will and daily thoughts, no peaceful moment or spiritual strength to write to you both. Only Claerenore wrote to you at my request. You two shall always find here the old homestead, but the best part of it, the dear parents - Mama, that good soul, and the all comprehending and all feeling little father, you too will miss everywhere, as it is with us, even though their spirit will always remain inseparable companions here. Everything happened so overly fast. It seems as though it is already years ago that they left us, and yet nevertheless we feel their presence in every room, and with every now happy, now serious thought and action. Without them the world looks even more dreary. They are the last and for a long time the only ones, from whom one always received and was permitted to receive and to whom one was never under the necessity to give.

In loyalty Your Claere.

(At this point Mr. Albrecht proposed to read the document in German to the witness.)

By Mr. Mann:

I object, Mr. Albrecht, on two grounds. First I object on the ground that this is unnecessarily time consuming and delays the termination

of this deposition. Secondly it seems to me that since the document which you hold in your hand and from which you propose to read, purports to be a reconstruction of a letter I am of the opinion that the petitioner could better concentrate on the content of the so-called reconstruction, rather than hearing it read aloud. However, before you either read or show the petitioner the document I have a question for you. Would

Tr 190. you be good enough to tell us who made the reconstruction of the letter?

By Mr. Albrecht:

Mr. Mann, at this point I am not on the witness stand and I don't think that I have to answer that question. At the moment I am furthermore unable to answer that question. Now, I should like to be able to agree with you that it would be better to let the witness read the German reconstruction of this photographed letter. I feel, however, that it is precisely because she may not be able to maintain her concentration over these several pages that I would prefer to read the letter to her slowly so that we may have some guarantee that she has been brought in contact with the entire letter.

By Mr. Mann:

I take exception to your comments concerning the ability of the witness to concentrate upon the letter. I suggest that you ask the witness whether she would prefer to read it or hear it read aloud.

By Mr. Albrecht:

Mr. Mann. I am sorry but this examination is not being conducted according to the wishes of the witness. The questions will be asked by counsel according to their conception of where their duty lies.

By the witness:

May I ask shall this be the deciphering of the document which you showed to me, then I would like to have the photographed letter once more.

By Mr. Albrecht:

Now Mrs. Stinnes, I shall read to you this letter.

(At this point Mr. Albrecht read the document to the witness in German.)

By Mr. Mann:

Let the record show that this letter performance has consumed better than 32 1 2 minutes. I feel constrained to state for the record that I object to this sort of procedure as I believe that its only purpose can be to stall the termination of this deposition.

Tr 191 Q. Mrs. Stinnes, do you remember that letter?

By Mr. Mann:

Please explain to the witness exactly what she is being questioned about I insist that she be told that what has just been read to her is a purported reconstruction of a letter which I and Mr. von Papen have found illegible. The witness is to be her own judge concernihg the genuineness of the reconstruction. I have asked who made the reconstruction and Mr. Albrecht has advised me that he is unable to tell me at this time.

By the Witness:

All this cannot be understood by me.

Q. I am afraid, Mrs. Stinnes, that there is some confusion here. I am not asking you to give us your opinion as to the accuracy of the reconstruction of this letter. My question to you is: now that I have read what purports to be a reconstruction of this four page letter marked Wagenknecht Exhibit Numbe. 1. do you recall having written that letter together with your husband? A. I see the handwriting of my husband and I believe to find here a post scriptum written by me. With regard to the contents of the letter I cannot say anything because a reconstruction. as that read to me has been designated. for me does not constitute the contents of the letter itself.

Q. Well. Mrs. Stinnes. look at page two of that photograph and see whether the parts that can be read do not correspond with what I have just read to you in part? A. Those few lines might correspond with this. but they still remain taken out of a context that is illegible. I cannot say any more. For me this is no documentary evidence.

Adjourned at 5:30 P. M. September 16. 1955.

Tr 192 Mr. Albrecht Continuing the Cross-Examination on September 19, 1955 at 3:00 P.M.

Q. Mrs. Stinnes, I read to you on Friday what purported to be a letter which your husband and you wrote to your brother Don Edmundo in 1922. Do you remember why that letter was written? A. No, I do not remember this letter at all.

Q. Well, the purpose of the letter was to render an account by your husband to Don Edmundo as his co-executor of your father's estate. Isn't that true? A. No, this cannot have been possible. I am sorry I have to contradict you because my brother Edmund was not a co-executor. My husband, as I testified before, and I myself as his successor were the sole executors. If such a letter should have been written, which fact I do not recollect as I just said, then it could only have been written for the purpose of protecting the arrangements which had to be made in the execution of the will in some way vis-a-vis the tax authorities. I stress once again, if it should have been written

Q I don't understand what you mean by taking measures to protect yourself against the tax authorities. What are you alluding to? A. To the then so-called confiscatory extent of the taxes, to safeguard the assets of the estate insofar as they existed

Q But that is exactly the reason why your father sold to your brother long before he died all his securities and investments, is that not so? A. No, this is not the case. I have testified once before that my husband, no-one else, purchased from my father the securities against an annuity for him and his wife.

Q. Mrs. Stinnes, my questions are designed to get down into the record what the true facts were. I would like to call your attention to

Tr 193 the fact, as you must know, that the last will of your father and mother is recorded in the records of the court in Wiesbaden. Is it not a fact, I ask you again, that your brother Don Edmundo was an executor of your father's estate together with your husband? A. I can only repeat what I have just testified. I shall try to obtain from the Wiesbaden authorities a copy of the will.

Q. But you see, you have been very positive in your statements that your brother was not a co-executor. Do you now want to state that you do not know or do not remember? A. I have testified, I stick to my statement. I do not know it otherwise than that my brother was not co-executor. However, to exclude any doubt I have agreed, as I just said, to request a copy from the Wiesbaden court.

Q. And you do not remember that your brother's attorney-in-fact was Judge Thomas during the time that he was in Buenos Aires and acted on his behalf as co-executor of your father's estate? A. I do not recollect this.

Q. Do you remember that your brother inherited one sixth of his father's estate? A. No.

Q. Do you remember that your father provided in his will that your brother was to receive his share of the estate without any deduction whatsoever? A. No.

Q. Do you remember that the will provided that in the event that your father predeceased your mother that your brother was also to become co-executor of your mother's estate? A. No.

Q. Do you remember that all the personal clothes of your father and his fur coat actually were given to your brother? A. This may be

Tr 194 the case, I cannot say anything definite about it.

Q. Do you remember that a Corporation was formed by the name of Haus Wagenknecht to hold the Wiesbaden home of your parents? A. That may be possible that such a Corporation was formed. I cannot say either in the affirmative or in the negative - I do not remember it exactly.

Q. Well, don't you remember that you received 30% of the capital stock of such a Company? A. I believe I have testified before that I possessed 30% of the ownership of Haus Edmund Wagenknecht as a present of my husband, the same as my siter.

Q. Now, in the letter that I read to you on Friday a person by the name of Ella was mentioned. Can you tell us who Ella was?

By Mr. Mann:

Mr. Albrecht, I must object to the form of that question as well as to all other questions in which you characterize this as a letter which you read. I submit that we are yet to see a letter. I submit that we have a photograph which persons familiar with the German language have said is illegible and what you have read is, as you yourself have termed it, a reconstruction.

By Mr. Albrecht:

Well, I am sorry that I was not more explicit. I should have referred to the letter as the alleged reconstructed letter.

Q. Mrs. Stinnes, in this alleged reconstructed letter the name Ella was mentioned. Won't you tell us who Ella was, if you know? A. This could only have been the widow of my youngest brother.

Q. And what was his name? A. Julius.

Tr 195 Q. Now, in that alleged reconstructed letter that I read to you on Friday, I read the following. "Do please tell me by means of an added word to a cable that you are in accord with my proposal." That had reference, of course, to the proposal to form a Corporation and to hold the house of your parents for the use of all children. Do you remember - do you not remember that there was subsequently received a cable from your brother approving the arrangement allegedly proposed by your husband? A. I do not remember such details.

Q. Well, just let me get this straight. Is it your testimony that you do not remember the text of an alleged letter that I read to you at all, or do you not recollect certain parts of the same? A. I believe I have testified, when we last met, that I cannot take any position to the contents of the reconstructed letter at all.

Q. Well why not - because you don't remember it? A. No, because this reconstruction has no value for me.

Q. Well, assuming that it has not any value for you, my question is, do you not remember that the various matters described in that alleged letter were written in some communication to your brother by you and your husband? A. Please repeat the question.

Question re-read to witness.

A. I believe that my last answer with reference to this reconstructed letter has decisively stated my opinion toward this letter. I have nothing else to add to this.

Q. Let us forget about the reconstructed letter. My question is, do you wish the record to state that you do not recollect that you and your husband ever wrote to Don Edmundo about the subject matters discussed in that letter? A. I just said a moment ago, if my husband - my small signature does not prove anything - if my husband eventually has written a letter of similar contents to my brother, then it could only

Tr 196 have intended not to have dissipated through confiscatory taxes the capital, or rather the assets of the estate - that means to protect it.

Q. Well, Mrs. Stinnes, the big taxes against the estate were saved when your father transferred eight million Marks worth of securities to your brother in return for an annuity. Isn't that so? A. I must expressly stress again, my father has never transferred to my brother, his son Edmund, any securities. He made an arrangement with my husband, but never with his son.

Q. Why are you so positive that your father never made such an arrangement with your brother. How do you know that? A. Because I know what my husband did.

Q. Well, even assuming that what you say is true, that your husband induced your father to make over some of his securities to him, that doesn't prove that your father did not turn over securities to your brother. Isn't that so? A. Since it has always been said that my father transferred all his securities to my husband, he cannot have transferred some to his son.

Q. I shall pursue the subject further with you tomorrow when I shall be in possession of further documents. I am turning now to the subject of the 1929 agreement that was made between you and your brother Don Edmundo in Buenos Aires. Now, wasn't one of the matters that was the subject of that agreement the revalorization claim which all

of Don Edmundo s brothers and sisters made against him by reason of the obligation which they claimed he still owed his father's estate. Isn't that so? A. I believe this too has already been said and is contained in the transcript. The entire purpose of my and my son Otto's journey has already been outlined.

Q. Assuming that it has already been outlined by you, is the answer to my question yes, or is it no? A. I had the intention to say something

Tr 197 .. further I did not complete my last answer. Our journey to Buenos Aires, in continuation of the execution of the will, was devoted to an agreement with my sisters and brothers, where my brother Edmund acted not as executor, but only as strawman, bysetting his name under the letters prepared by us and presented to him and approved by us.

Q Tell me, Mrs. Stinnes, had you not also bought the claim of Ella Radefeldt and Erika Wagenknecht against your father's estate? A Yes. I bought the part per stirpes, namely the claims of Ella Radefeldt and her daughter Erika and I compensated them therefor in complete agreement with her.

Q. Were Ella and Erika the widow and daughter of Julius Wagenknecht? A Yes, I have said this once before.

Q Well, that was another item that was discussed in Buenos Aires in connection with the settlement with your brother, was it not? A. I cannot recollect these details. This had already been completed, whether this was mentioned again I don't know. Only insofar as this, I should like to say, as the claims of that branch had passed to me.

Q Wasn't another point of the negotiations with your brother in Buenos Aires in 1929 the claim relating to your brother Hermann? A. Yes, this has also been said before. This also passed over to me since my brother Hermann was indebted to my husband for many millions, his debts extending not only over a part but the entity of his heritage.

Q. In connection with those discussions in 1929, did you personally not also exert a claim against your brother arising out of certain claims you alleged you had against Edmund Wagenknecht Limitada of Montevideo? A. I do not know any Edmund Wagenknecht Limitada of Montevideo.

Tr 198 Q. Your answer then is no to my question? A. In this reference yes. With reference to the Edmund Wagenknecht Limitada, I don't know it, I never heard of it.

Q. Do you remember a firm by the name of E. Wagenknecht & Company of Montevideo? A. My recollection does not go back that far. I do not know the name of my brother's firm in Montevideo

Q. At the time you and all other children came back from Buenos Aires, what was the name of your father's firm in Montevideo? A. Mallmann & Company.

Q. And where was E. Wagenknecht & Company? A. I just said it before, I don't know of any E. Wagenknecht & Company.

Q. And when your brother went back to South America to do business in Montevideo and in Buenos Aires, what was the name of his firm? A. This might have been called Edmund Wagenknecht & Company, but I don't know this for sure.

Q. And that firm was located in Montevideo? A. I don't know. At that time he lived in Buenos Aires. Whether he had any interests in Montevideo this is beyond my knowledge.

Q. At the time of the 1929 negotiations in Buenos Aires with your brother, was there any discussion of any matter relating to Giesemann? A. I would have to think this over, I cannot say it at the moment.

Q. Well, let us take up another point of your discussions in 1929 in Buenos Aires. At that time didn't you say that certain claims were made against you as one of the executors of your father's estate and you thought that your brother ought to do something to bear some of that burden? A Who made these claims?

Tr 199 Question re-read to witness.

A. No claims had been made against us.

Q. Well, didn't you advise your brother that you were being touched for money in connection with the estate and that you wanted him to take care of part of that financial burden? A. Before we went to Buenos Aires, as far as I can recollect, we had informed my brother about the purpose of our journey and had advised him further that we

were desirous of certain arrangements which should be made with the sisters and brothers and that he should give his agreement for this. Everything about which we had to inform him and the proposals which we intended to submit to him had been worked out in full detail here in Germany between my sons Hugo and Otto. We took along these proposals in writing and at the same time also brought with us the replies to the relevant letters which were to be sent from Buenos Aires to the various per stirpes parts. We needed his signature in order to be able to execute the agreements so to say tax free. My brother Edmund accepted everything which was submitted to him and signed the agreement and reply letters. I should like to stress this again, in this connection he acted only by giving his name as strawman. This was his function.

I must explain one thing, respectively correct it. We brought along the finished drafts for the letters which my brother was supposed to sign in case he would agree. The letters themselves, after my brother had approved the drafts, were written by my son Otto on the typewriter which he brought along, on sheets of paper which my brother Edmund supplied him and were then signed by my brother Edmund.

Q. Well now, before you went to Buenos Aires, your sister Nora for example, and particularly your brother Dr. Walter had a good deal of correspondence about the claims that they made against your brother, did they not? A. I don't know this. If they have written in connection with this matter to their brother in Buenos Aires, this had all been arranged and drafted by my sons and we brought the letters with us. This is as far as I can recollect.

Tr 200 Q. Well, and your sister and brother also had correspondence with you, did they not, and put forward claims against you as executor of your father's will, did they not? A. I do not recollect this, so that I can give a definite answer. If they wrote such letters, then I certainly discussed the answers in this matter with my sons Hugo and Otto and probably they also drafted replies. As I said, I cannot say anything more definite about this.

Q. Well, let me ask you then, who all were members of this conspiracy. Did Judge Thomas participate in the effort to cloak the ownership of property? A. First I must protest against the expression conspiracy. Against whom should this conspiracy have been directed? With the assistance of my sons I wanted to make an agreement with my brother Edmund that was based on honesty and free will. Under this agreement as such there was no need to camouflage anything between the various participants. This is an accusation which as an honest person I must reject. There had to be camouflaged, as I said it before, only vis-a-vis the tax authorities in order to save at least the substance and in order to be able to let my sisters and brothers ultimately receive such portions of same as they were entitled to. Whether Judge Thomas had any part in the matter or was occupied with the same I do not know.

Q. Well, Judge Leveloh was familiar with the matter too, was he not? A. I do not know this.

Q. Dr. Soeller had also knowledge of the matter, did he not? A. I don't know it.

Q. Mr. Unger also had knowledge of the matter, did he not? A. I do not know it. I have said my sons Otto and Hugo had worked out the proposals. With whom they talked about the drafting I don't know.

Q. But all of these people whose names I have mentioned had some familiarity with the claims that were made by your brother and sister, did they not? A. I cannot say any more than I have said before.

Tr 201 Q. Well, must I accept your answer as a no or a yes? A. It is neither yes nor no if I say I don't know it.

Q. You see, I am pressing you on these matters because I should think the court will want to know how much you know as executor of the estate of your father, if you really acted as such. Is there anything more you can say, is there anything more you can recollect so that it can be placed in the record? A. I believe I have laid down the facts, as far as they are really important, according to the truth. I could add, in order to be able to remember details of the arrangement, if it should at all be necessary which I doubt, for this I must have time. All this goes back for decades.

Q Well when you went to Buenos Aires in 1929 did you also discuss with your brother the claims made by Albert Jensen on account of Mazaruca? A I do not recollect any more

The witness was excused

By Mr. Mann

Mr. Albrecht, I believe you requested that the original of Petitioner's Exhibit Number 13 be placed in the record I hand the original of that exhibit to the Consul and ask him to be good enough to mark it for identification as Petitioner's Exhibit Number 13 and return to me at his convenience the photostat of that Exhibit previously put into the record Both Mr Wieferich and Mr Albrecht have asked the petitioner to produce a copy of the enclosure mentioned in Petitioner's Exhibit Number 13 Let the record show that a typewritten copy of the handwritten letter referred to therein has been exhibited both to Mr Wieferich and to Mr Albrecht together with a translation thereof

(Consul put original of Petitioner's Exhibit Number 13 in the record and returned the photostat thereof to Mr Mann)

By Mr. Mann

Tr 202 It is stipulated that the document referred to namely the enclosure to Exhibit 13 is to be marked for identification and entered in the record of these proceedings as Petitioner's Exhibit 13b with the translation 13c Pursuant to agreement a photostat is being marked in lieu of the original

At our Session of September 15, 1955, Mr Albrecht you gave us a possible estimate of the length of time which you stated that you would require to complete your cross-examination I wonder if you would care to give us a more precise estimate at this time

By Mr Albrecht

In view of the difficulty experienced with the petitioner in obtaining responsive answers to my questions, I am afraid that I shall probably go through the balance of this week in questioning her concerning the agreement of 1929 with her brother Don Edmundo and the subsequent agreement made with the brothers and sister to settle the claims which they had made against her

You have produced a number of documents at my request that are now in the hands of the Consul and you will be asked to produce further documents that will be required in my cross-examination of the petitioner. I think that the questioning of the witness on the basis of that documentation may very well take another week. Furthermore, there remains much of your direct examination and the documentary record, namely the exhibits which you have submitted with respect to all of which it will be necessary to question the witness, so I assume, if there are no untoward incidents that my cross-examination may very well take another two to three weeks. Upon its completion, moreover, we shall be confronted by your re-direct, Mr. Mann, and by your re-cross, Mr. Wieferich, as well as such re-cross as I will be entitled to conduct on the basis of such matters that may be developed upon the re-direct and re-cross examinations. I can well believe, therefore, that the deposition of the witness may well take another month.

Adjourned on September 19, 1955,
at 5:30 P.M.

Tr 203 Mr Albrecht Continuing the Cross-Examination
on September 20, 1955 at 3:10 P.M

By the Witness:

May I ask for the floor for a monient I said yesterday already that I would do everything to obtain a copy of the Last Will of my father from Wiesbaden. Since this will take a longer time - I shall only get it at the earliest tomorrow - I also instructed in the meantime a person of trust to examine the will. According to that the will of my father designates as executor my brother Edmund together with my husband and in succession of my husband myself. I must therefore unfortunately correct an error of mine. I am sorry that this error happened to me. This may be explained by the fact that my husband carried out the execution of the will here in Germany and in succession of my husband I. In addition, the fact stands that practically no estate of any consequence existed since my husband at the time of his life had bought of my father the main values of the property. In fact, and this was mainly in my recollection, my brother Edmund practically never made his appearance as executor of the will.

Q. -I am very glad to hear you finally correct a statement that you have repeatedly made to the effect that your brother Edmund was not an executor and which is of course wrong. Now, as a matter of fact even though your brother Edmund was in Buenos Aires while he was an executor, did he not have a representative in Muelheim to whom he had given a Power of Attorney to represent him and to work with your husband and after your husband's death with you? A. About this too I have been informed in the meantime in order to refresh my recollection. Judge Thomas had been instructed to act as his attorney-in-fact in Germany.

Q. I am glad that you have also made this correction to your previous testimony. Now, as a matter of fact you had been told by Judge Thomas, had you not, and you knew that Don Edmundo, your brother, had taken over and bought securities from your father in his life time, is that no so? A.

Tr 204 No. I have not seen Judge Thomas since months and did not ask him regarding the alleged fact of such a purchase. I only know that my husband made an agreement with my father and that my husband was the purchaser of the securities of my father.

Q. I would rather you testified that you weren't sure in your recollection of the events, if you really don't remember them. But you have stated now definitely that it was your husband who bought the securities of your father and I ask you what proof have you of that fact? A. I can only endeavor to say the truth to the best of my knowledge, which does not exclude an occasional error, which for instance I just corrected. To my knowledge my brother Edmund was at that time not in the least in a position to possess the money in order to take over the securities of my father. This should be sufficient proof why my husband so acted.

Q. Is that the only proof you can give us? Don't you have any written proof? A. I do not recollect at the moment any written proofs which I myself might have possessed and which may have been destroyed. I cannot say any more at the moment.

Q. Would it surprise you if there were proofs in existence that it wasn't your husband but your brother who bought the securities from your father? A. In fact it would surprise me very much if convincing evidence

would be submitted to me.

Q. But you don't exclude the possibility that such proofs exists that Don Edmundo bought securities from his father, do you? A. I repeat my last statement.

Q. You will remember that in the alleged reconstructed letter, Wagenknecht Exhibit Number 1, which I read to you the other day, reference is made to the purchase by Don Edmundo of his father's securities, was it not? A. I believe to have pointed out already with regard to the reconstructed letter that for me this reconstruction is in no way a con-

Tr. 205 vincing document as far as I am concerned; even if two or three sentences from this photograph could have been deciphered, they are entirely taken out of the context of the complete letter, which constitutes vis-a-vis the few readable sentences more than 90% of the entire letter. As long as I am not presented the original of this letter, this photograph is of no value to me.

Q. Well, let me show you a photostat of what purports to be a letter dated April 12, 1921, addressed to Consul Edmund Wagenknecht and signed by Judge Thomas and ask you whether that refreshes your recollection? A. This letter does not shake my recollection in any way. This will be one of the many letters which had to be written in this matter for reason of camouflagium.

Q. Well, let me ask you again, was Judge Thomas a member of this conspiracy to defraud the German Government out of taxes? A. You speak again of a conspiracy. I can only repeat what I have just said. Only Mr. Thomas, in case he would at all remember these occurances, would probably be in a position to say what this letter meant.

Q. The date of that letter was April 12, 1921. Now I want you to look at a photostat of what appears to be a copy of a letter dated March 14, 1927, which Judge Thomas wrote to the Finance Office (Finanzamt) Muelheim-Ruhr, and which also bears your signum, in which reference is made to the purchase by Don Edmundo of securities from his father in April 1921. Does that refresh your recollection? A. No, this does not refresh my recollection and this does not shake my testimony.

Q Your initials appeared on that letter, did they not? A Mine, and as far as I can see those of my son Junior

By Mr. Mann:

You have the original of that letter, Mr Albrecht?

By Mr. Albrecht:

Tr. 206 No, I have not

By Mr. Mann:

Do you expect to produce it in this hearing?

By Mr. Albrecht:

No, I do not

By Mr. Mann:

Could I request that any documents given to the witness be furnished with translations?

By Mr. Albrecht:

Mr. Mann, I am afraid unable to do that at this time. I am showing these documents to the witness as a means of refreshing her recollection or at least giving her an opportunity to do so. I do not propose to put them in the record at this time as I am unable to do so

By Mr Mann

I think the Counsel for the Petitioner is at a disadvantage in not having translations of these letters at the time that the petitioner is questioned.

By Mr. Albrecht:

Well, I would like to make the observation then that there has been recorded in the transcript that Mr. von Papen is appearing with you to assist you in the problems of language and at the time that the witness has been shown the previous photostats, you have also been shown a photostat and Mr. von Papen has made the meaning of the same available to you, at least that is my observation.

By Mr. Mann:

I repeat that I think that Petitioner's Counsel is at a disadvantage in not having a written translation of the letter before him when the petitioner is being questioned concerning the letter

By Mr. Albrecht:

Among the documents which I have asked you to produce, Mr. Magn, were the reports made on behalf of Hugo Stinnes G. H. and on behalf of the witness pursuant to the requirements of the law for the Equalization of Burdens (Lastenausgleichsgesetz). You have informed me that you have
Tr. 207 been advised that these reports have not yet been filed and therefore could not be produced. I am now advised by German counsel who is a specialist in tax matters, that the law for the Equalization of Burdens (Lastenausgleichsgesetz) fell into two parts, the first of which dealing with the Soforthilfeabgabe "Immediate Contribution" required a statement of assets to be filed as of January 1, 1949, whereas the final requirement under the law, which I believe was referred to as the Definite Law for the Equalization of Burdens (Entgueltiges Lastenausgleichsgesetz) required the definitive statement of assets to be filed on December 31, 1954 and had to contain all details respecting the capital assets as of the stand of January 1, 1949. I wish, therefore, that you would look into this matter once more and see whether we cannot produce for the record some statement that will list the assets both of the family partnership and of the witness.

I think you also agreed to continue the search for the six or seven documents that I described to you on September 9, 1955, with respect to which you advised me that they had not been found and that that was due probably to their destruction by fire in the course of the Allied air raid on Muelheim during the war. I think it is important for us as well as the Court that we have some sort of statement in the record fairly contemporaneous with the death of Hugo Stinnes Sr., or shortly thereafter, that will give some indication of the capital assets in his estate or the assets which he owned shortly before, or which his widow, the witness, received shortly thereafter as his principal heir.

If you will refer to Petitioner's Exhibit Number 13b, that was put into the record yesterday, references are made - you will see that there are references therein to a letter dated July 10, 1950 from Hugo to his brother Otto and to another letter dated July 13, 1950 from the witness to her son Hugo. I think that these should be produced in order to complete

the record of the transaction referred to therein.

I would like to repeat my request that search be made for a copy or the original of the Power of Attorney which the petitioner gave to her son Hugo and under which he acted on her behalf from the late 20ies to 1950. I first made the request for this document on September 9.

I would also like to repeat the request I made on September 13 for copies, or for a copy of such wills of the petitioner or codicils she may
Tr. 208 have made to the joint will of herself and her husband, which is marked Petitioner's Exhibit Number 1. I first requested these papers on September 13 and I think that at that time you indicated that you would consider my request.

I think we should also have in the record a copy of the partnership agreement in effect between the witness and her sons Hugo and Otto.

The witness has already indicated that she has requested someone to obtain for her from the record of the court in Wiesbaden a certified copy of the joint will of her father, Consul Edmund Wagenknecht, and her mother Clementine Wagenknecht. My information is that this will was proven on April 21, 1921 before Notary Römeiss, Wiesbaden, and is recorded in Notarial Register 240/21.

Among the exhibits introduced by you, Mr. Mann, there is the Petitioner's claim filed with the Office of Alien Property in Washington (Petitioner's Exhibit Number 12) which has been signed by her on February 3, 1955. I think the record should be complete on the subject of petitioner's efforts to claim property vested by the Office of Alien Property. I would therefore request that there would be also produced the Notice of Claim signed by the petitioner on August 6, 1948 and subsequently filed by her in Washington. There should also be made a part of this record, and I therefore request that it be produced, a letter dated August 1, 1952 written by Otto Stinnes to the Office of Alien Property and marked for the attention of Mr. Hilken. I would also like to have produced a copy of a letter which the petitioner wrote on June 15, 1948 to the Alien Property Custodian in Washington requesting among other things cancellation of the seizure of the Atlantic Assets Corporation shares claimed by her. I would also like

to have produced a copy of a letter dated May 31, 1948, written by Hugo Stinnes as attorney-in-fact for his mother and addressed to the Central Bank (Landeszentralbank) of the Land of North Rhine Westphalia, Muelheim-Ruhr.

There was also signed by the witness on August 7, 1948 a document entitled "Supplement" which presumably was intended as a supplement to her claim filed with the Alien Property Custodian. I think that a copy of that statement should also be produced.

While I am at it it may be just as well for me to request the production of two further documents at this time, which I would have had to re-
Tr. 209 quest later on in my continued examination of the witness. I would like to have produced the agreement entered into between the witness and her brother Don Edmundo in Buenos Aires on or about April 5, 1929. And I would also like to have produced a copy of a letter dated January 20, 1929 which the witness wrote to her brother in Buenos Aires and which is referred to in the said agreement entered into in April of that year.

By Mr. Mann:

Mr. Albrecht, I am going to take up your requests insofar as I have been able to note them. At the outset, however, I would like to call your attention to the fact that these oral requests for the production of documents during the taking of a deposition are somewhat irregular. I believe that in the taking of a deposition you are entitled to question the party about the existence, description, nature, custody, condition and location of any books or documents or other tangible things. I believe, however, the rules give you other methods of obtaining the production of documents. Nevertheless, in our efforts to cooperate with you in taking the petitioner's deposition we have to the best of our ability produced the documents which you have requested. And with respect to the requests which you have just made, insofar as those documents appear to be relevant or even reasonably to lead to any discovery, we intend to produce them. We do that with the hope that this will expedite the termination of this deposition. Now I will take your requests as you made them.

You asked for the forms filed by the Hugo Stinnes o. H. and the witness with respect to the law for the Equalization of Burdens. I am advised

that such forms have not been filed but you may be assured that we will look into the matter again

With respect to your request that we continue the search for the six or seven documents which you described in the session of September 9, 1955, I can only tell you that a search was made and they were not found In this case, as in all others, we are continuing the search. If any of those documents come to hand they will be produced.

With respect to the letter of July 10, 1950 which I believe you said was written by Hugo Stinnes Jr., to his brother Otto and referred to in
Tr. 210 Petitioner's Exhibit Number 13b, I think it doubtful that such would be in the possession of the petitioner since it is not her letter nor does it purport to be addressed to her I believe the reference only shows that petitioner had seen such a document Naturally, if this is not in the possession of the petitioner, we will not produce it.

You have repeated your request which you have often made that we search for the original of the Power of Attorney, or copy, which the petitioner gave to her son Hugo We have exhausted our search on that point and the same has not been found. I am advised, however, that you are from time to time in touch with Mr. Hugo Stinnes and if you care to obtain that document or a copy thereof from him, I am sure that the petitioner will gladly identify it for the purposes of this record.

With respect to your request for a copy of a recent will by the petitioner changing the joint will, I regret to inform you that we will not make that document available for the record I have had the document described to me with its various contents and I am unable to see that it is relevant in any way to the matter under discussion here, or could lea to discovery. However, I am prepared to show you a copy of the petitioner's will in order that you may read it and verify the statement that I have made. Moreover, the petitioner is quite prepared to have her credibility tested against this will and would be prepared to hand a copy of the will to the consul in order that he may seal it and attach it to the deposition so that the will could be read when and if the deposition is read.

With respect to your request for a copy of the partnership agreement

between the witness and her sons Hugo and Otto. I will examine that document and we will then consider whether we will comply with your production request.

You have asked that the joint will of the petitioner's mother and father be obtained from the court in Wiesbaden and produced at the taking of this deposition. We have requested a certified copy and when and if it is received it will of course be produced here. In connection with that request, however, I feel constrained to state that I have reason to believe that you have a copy of such a will in your possession and that considerable time and burden on the petitioner could be avoided by your producing that will to her and permitting her to recognize its genuineness.

Tr. 211 You have asked for a copy of the petitioner's claim signed August 6, 1948 and certain other documents relative thereto. I have just asked Mr. Wieferich whether the Office of Alien Property has furnished you with those documents and Mr. Wieferich is of the impression that you have them. Accordingly I would again suggest that if you have them you produce them here and let the petitioner identify them. Such would save placing a burden on the petitioner. However, unless you see fit to withdraw that request we will produce those documents.

With respect to the two further documents which you requested, namely the agreement signed in Buenos Aires on or about April 5, 1929; we will conduct a search and if that agreement is found it will be produced; and the same is true with respect to your request for the copy of the letter of January 20, 1929.

By Mr. Albrecht:

Thank you very much for informing me that with respect to the documents I have requested and which have not yet been submitted that the search for the same will continue.

I trust that without further urging on my part you will apprise me when you have come to a decision as to whether or not you will produce the partnership agreement in effect between the witness and her two sons. As the last Will of the Witness' father and mother is not exactly a short document, to avoid any possible difference of opinion later, I think it would

be to the advantage of all of us as well as to the record if a certified copy of the same were made a part of the record rather than a mere typewritten copy which the witness conceivably might recognize in its major aspects. The testimony of the witness is already to the effect that she was in complete disagreement with some of its provisions. I think, therefore, that we should have a certified copy of that document in the record.

With respect to the first claim filed by the witness with the Alien Property Custodian in Washington and the four other letters and documents I have requested that relate to petitioner's vested property in the United States, these documents are known to me to exist and as a matter of fact it is my recollection that they were produced by the Attorney General through Mr. Wieterich in his examination, I believe, of the witness Hugo Stinnes. The deposition of that witness was taken in Duesseldorf in August or September 1954 in connection with the action brought by Mrs. Elsa W.
Tr. 212 de Wagenknecht against the Attorney General in what are known as Civil Action Number 1734-52 and Civil Action Number 4920-52. I have with me a copy of Hugo Stinnes' deposition legalized by the American Consul and to the same are attached the various documents relating to the witness' first claim filed in Washington. Of course the originals of those exhibits are not present here and I have therefore asked that there be produced the witness' copies of those documents. I have no desire to add to the burden of searching for documents and if you do not dispute the authenticity of these documents annexed as exhibits to the deposition of Hugo Stinnes, I would be prepared to stipulate with you that they be made a part of the record of these proceedings and I would then use them as a basis for questioning the witness.

By Mr. Mann:

I regret the time that this is taking, Mr. Albrecht, while the witness is excused for a recess. However, permit me briefly to state that with respect to the certified copy of the Wagenknecht bill, I am told that it takes three weeks to obtain such a certified copy. Accordingly, I would suggest that for our purposes here we use your copy and substitute the certified copy when received. I see no reason to keep the deposition open awaiting the certified copy.

With respect to the claims, the 1948 claim of Mrs. Stinnes, I will gladly stipulate with you concerning the genuineness of that claim as heretofore appended to one or two depositions which you and Mr. Wieferich have taken. Now, Mr. Albrecht, on September 16, we produced pursuant to your request a voluminous amount of material. At that time I asked you to be good enough to return to me the originals in order that they might be restored in the files of the Hugo Stinnes o. H. I am yet to receive those originals and I would like to know when I can expect them.

By Mr. Albrecht:

Mr. Mann, I am sorry you seem to take an exception to an alleged delay on my part to oblige you. Nothing is farther from my mind than to refuse to cooperate with you. I thought I had asked Mr. von Papen whether anyone in the Stinnes Organization would be incommoded if these documents didn't find their way back into the files within the next few days. Obviously I want to make use of these documents and obviously I would like to proceed in as orderly a manner as possible. I think that within another day or two I shall be able to take up - to examine the documents that you have produced
Tr. 213 and presumably return all originals to you. Do you now wish me to understand that there is pressing need for these originals in Muelheim now, or can they wait another day or two for their return?

By Mr. Mann:

We would like to have the documents returned at your earliest convenience. Moreover I believe an examination of those documents should have been made before you made your additional production requests as an examination of them might disclose some of the information which you have requested. That I do not know.

Q. Now, Mrs. Stinnes, I think you testified that there was nothing of any consequence in your father's estate. Is that the answer you want to go in this record? A. To my knowledge this is the case, with the exception of the property - the property of his house in Wiesbaden.

Q. Well, I wonder whether your knowledge is very accurate. Isn't it a fact that the total value of your father's estate was well in excess of five million Marks? A. I do not remember the exact value, but I stated

several times before that what he possessed in values was purchased by my husband in order to safeguard him and his wife under all circumstances, whatever the developments in Germany with regard to the inflation might be.

Q. Well, who paid the annuity to your father? A. I cannot say exactly which agency. The agreement was made before 1921, presumably one of the Stinnes firms, presumably Hamburg. I think I also said before via the Hugo Stinnes AG Reederei and Ueberseehandel.

Q. Well, don't let us confuse the estate of your father and such properties or securities as he may have alienated before his death. I am asking you whether it is not a fact that the estate of your father was worth in excess of five million Marks? A. I believe to have stated that I do not know this.

Tr. 214 Q. You see, I am surprised that you should say that outside of the house there was nothing in the estate. And so I ask you again, wasn't there an estate that was worth at least five million Marks? A. No, I have stated before that I cannot make any statement regarding this - I don't know it.

Q. Well, do you remember that in 1922, after your mother had died there was a meeting held in the Esplanade Hotel in Berlin at your husband's request in order to put before the heirs of your father the proposal that he wanted to make to take over the house and contents for the use of all heirs? A. I have forgotten this entirely. I cannot add anything further to that.

Q. Do you know Mr. Leveloh's signature? A. I believe that I still know it.

Q. Well, I shall show you a photostat of what purports to be a memorandum for the files (Aktenvermerk) dated April 19, 1922 signed by Mr Leveloh and I ask you whether that refreshes your recollection? A. I have not seen the signature of Mr. Leveloh for such a long time that I cannot state whether it is his signature under all circumstances. In dubio I suppose so.

Q. I am glad to hear that you are willing to accept that as the sig-

nature of Mr. Leveloh. I assume, therefore, that you admit that such a meeting took place in Berlin on April 12, 1922 at which you were an attendant. Is that true? A. I believe so, I had forgotten it.

Q. You see, this memorandum confirms the proposal made by your husband which I read to you last Friday in the alleged reconstructed letter which you and he wrote to your brother. Do you remember that? A. Yes, will you please hand this to me once more?

By Mr. Mann:

Tr. 215 Let the record show that the document handed to the witness was the memorandum.

A. I should like to comment on some of the points mentioned herein, points which came back to my memory when reading this memorandum and I should like to remark that to my knowledge they are on no point in contradiction to any statements I have made so far. It should only be noted that the legacy amounting to 20,000 Marks was made to the City of Wiesbaden in order to maintain the burial place of my parents for all times. In view of the inflation this sum, of course, was insufficient and I personally have taken it over - as far as I know after the death of my husband - to decorate with dignity the burial place of my parents. It did cost me much more than 20,000 Marks. And also I had undertaken, since none of my sisters and brothers concerned themselves with this legacy, to take over Mrs. Forelle to pay for her living until her death, and she lived on very long. During the last years of the life of my parents, perhaps the last 15 years, she was housekeeper for my parents and my father therefore owed her much gratitude. In addition I should like to give my opinion in respect to a statement here which has been made expressively and this is the most important thing for me "the inventory shall also be taken over in total in order to maintain the present character of the house if at all possible". It has always been said, my husband had taken over the obligation to maintain this house forever for the heirs, the children of his father-in-law, so that they could always reside there. But here it is expressly restricted to the potential possibility.

Adjourned on September 20, 1955
at 5:30 P.M

Tr. 216 Mr. Albrecht Continuing the Cross-Examination
on September 22, 1955 at 3:00 P.M.

Q. Mrs. Stinnes, we were discussing on Tuesday the memorandum or Aktenvermerk of Judge Leveloh with respect to the Conference in Berlin on April 12, 1922. Now, it is a fact, is it not, that when your husband's offer to take over the Wagenknecht homestead in Wiesbaden was communicated to the heirs of your father, they all agreed to the generous offer made, with the exception of Dr. Walter. Is that not so? A. I think I have already made a statement on that point the last time.

Q. Well, won't you make it again? That is a fact, is it not? A. The conference took place in Berlin.

Q. I am afraid I did not make it clear enough for you. I just wanted to ask you whether it is not a fact that the generous offer of your husband to take over the homestead, or the house - the Wagenknecht Haus - in Wiesbaden, was accepted by all his heirs and the only one that caused any difficulty was Dr. Walter, isn't that so? A. That is correct.

Q. But finally Walter also consented, did he not? A. I believe yes.

Q. So that the offer was at that point accepted by all heirs except your brother Edmund, was it not? A. Edmund was not present, it first had to be submitted to him.

Q. And thereupon your husband and you wrote a letter to your brother in which you described the offer to take over the Wiesbaden house of your father, is that not so? A. Yes, that he gave his consent that it should be taken over by my husband. I do not remember the letter, but I suppose that this is what happened, since my husband, together with my brother discharged the execution of the will.

Tr. 217 Q. Well, Mrs. Stinnes, I think that you should remember that letter because the alleged reconstructed letter that I read to you last week and which is Wagenknecht Exhibit Number 1, was that letter, was it not? A. I have said everything regarding this letter which I can say

Q. Well now, it is true though, is it not, that your brother thereupon cabled to your husband that he accepted that offer. Is that not so? A. Why should he not have cabled this, I should like to ask?

Q. Then I take it your answer is that your brother did send a cablegram to your husband accepting the offer? A. I have said I do not remember this cabled reply, and I have said I do not know why my brother should not have accepted the generous offer of my husband. I do not understand the meaning of these questions.

Q. And thereupon, in accordance with your husband's offer, a Corporation was set up with the name Haus Wagenknecht to hold title to the Wiesbaden property, is that not so? A. It is possible that this was done for that reason.

Q. But after a few years dispute arose between the heirs of your father with respect to the division of the estate. Do you remember that? A. I do not remember any disputes - all the heirs had agreed.

Q. Who was Erika Wagenknecht? A. The daughter of my brother Julius.

Q. And who was Ella? A. I also answered this before - the wife of my brother Julius, my sister-in-law.

Tr. 218 Q. Well, isn't it a fact that Erika and her mother threatened to sue the estate and made claims against you and your brother? A. I do not remember this.

Q. And isn't it a fact that to avoid such litigation you bought out the claims of Ella? A. I have said before that this was bought by me. I do not remember that this occured on account of disputes. It is too much to expect me to remember this, it is too long ago.

Q. Well, didn't you write a long letter to your brother Edmund in Montevideo about the difficulties you were having? A. What difficulties? With my sister-in-law Ella?

Q. Yes. A. I do not remember any such letter - I just said before I cannot remember all these details for decades.

Q. Well, I wish you would look at this photostat of a copy of a letter dated January 10, 1929, which is addressed to "Lieber Edmund", and

signed "Claere", and ask you whether that refreshes your recollection?

By Mr. Mann:

Is the original of this document available?

By Mr. Albrecht:

No, it is not. I have no knowledge at this time where the original is located.

A. It was very interesting to read this letter which I did not remember. It is only a proof how painfully accurate we carried out the execution of the will - I as successor of my husband.

Q. Will you be good enough to look in your files to see whether you can find a copy of this letter of January 10, 1929 which you wrote to your brother? A. I will try to do this, but I think it is useless. We are looking
Tr. 219 all the time for documents and I did not find this copy, otherwise my answer would have been different.

Q. If you do find it I wish you would be good enough to bring it with you. A. Yes.

By Mr. Albrecht:

Meanwhile, and until the production or explained absence of the witness' copy of the said letter of January 10, 1929, that she wrote to her brother, I am offering a photostat of a copy of the same and request that it be marked Wagenknecht Exhibit Number 2.

By Mr. Mann:

Mr. Albrecht, we will make a search to see if we have a file copy of a letter of which this purports to be a typewritten copy. I must object to your characterizing this as a letter which the witness has written. As I understand her testimony it was to the effect that the letter interested her. We will, nevertheless, make the search.

Q. Now, when any of these disagreeable matters arose between the heirs of your father, you as a successor of your husband would discuss them with Judge Thomas, the attorney-in-fact of your brother, would you not? A. I suppose so, but I do not remember any more.

Q. Well, you as much as indicated in your letter that you would talk

with Mr. Thomas in connection with negotiations, as he represented your brother, didn't you? A. Yes, I have overlooked this because the whole matter is altogether of no consequence to me. Why do you ask me again, since all this is contained in the letter?

Q. Well, it finally became a matter for you to discuss with Edmund all sorts of questions including the disputes arising out of your father's estate, did it not? A. Yes, I acted in cooperation with my brother.

Tr. 220 Q. Well now, as a matter of fact, you were represented in many negotiations relating to your father's estate by your son Hugo at that time, weren't you? A. Possible - I do not remember this any more.

Q. Well, I wish you would think about it because in the spring of 1929, didn't your son Hugo and maybe also Otto, discuss with Judge Thomas all the points that you wanted to take up with your brother? A. I don't have to think about it. Here we are only talking about one special letter which I do not recollect any more. In addition, I have testified before for the transcript and I have stated this long before, I particularly went to Buenos Aires for the purpose of making special arrangements with my brother and co-executor of the will. And these were most carefully prepared by my sons Hugo and Otto. All this is contained in the transcript.

Q. Well, that is exactly what I have referenced to. And before you went to Buenos Aires Hugo and Otto discussed all the points that needed settling with Judge Thomas as the representative of your brother, did they not? A. They had to do this. Should we perhaps have sent hundreds of cables between Buenos Aires and here?

Q. Well now, Otto didn't really do very much in connection with working out details of the settlement, did he? A. I believe my last answer gave a reply to this.

Q. I am sorry I must press you further on the matter. My question was: did Otto have much to do with working out a settlement with Judge Thomas? A. The question is unclear, could you read it back?

Question re-read to witness.

Tr. 221 A. I did not deal with the details. If two of my sons whom I trusted and Judge Thomas, the representative of my brother, worked something

out together, then it was of no importance to me whether one worked half an hour less or half an hour more with it. I do not know.

Q. Well, I really think you should have told us in this connection that Otto had only then returned from the Orient. Wasn't that true? A. That has nothing to do with it.

Q. Well, if Otto has been away for a few years, I should not think that he would have sufficient background to contribute to the working out of the disputes or the claims made by the heirs of your father against the executors, is that not so? A. I have nothing more to say to this entire matter than I have said before.

Q. Well, at this point I would like to have the record corrected in another respect. You have testified that the administration of your father's estate had been completed. As a matter of fact, there are still matters coming up with respect to your father's estate of which you must have knowledge. Isn't that so? A. For the last settlement we went to Buenos Aires.

Q. But in the last few years there is still correspondence coming in with respect to your father's estate, isn't there? A. I cannot say anything regarding this. I do not remember any letters.

Q. Well, I show you what purports to be a photostat of a letter dated June 20, 1950, presumably signed by Dr. Walter Wagenknecht and addressed to you. And on the same appears to be your handwriting and your initials, and I ask you whether that refreshes your recollection that there have been recent matters arising with respect to the estate? A. That does not refer to my brother, but to my nephew. I referred your aforementioned question to my sisters and brothers. That my nephew has approached me again with this letter, this I have recollected.

Tr 222 My short statement on this letter here gives an answer to this letter. I left the further settlement to Junior and I know that the claim of my nephew was turned down completely. I have not concerned myself with subsequent matters. I could only state - and I do not like to do this because it only continues the palaver - that my nephew Walter tries very hard to get into the good graces of his aunt Claere.

Q. Mrs. Stinnes, you have just told us that you referred this letter of June 20, 1950, from your nephew Walter Wagenknecht, the son of your brother Walter, to your son Hugo to be taken care of by him. Is that not so? A. Yes, this may be seen from my note on the letter.

Q. And that was at a time when you had already withdrawn your Power of Attorney from Hugo, was it not? A. May I see the date? I believe that was shortly before, I do not recollect the exact date of the withdrawal of the Power of Attorney at the moment.

Q. Well now, after your letter of January 10, 1929, that you wrote to your brother and which you have just seen a copy of, did you write any further letters to him before you went to Buenos Aires? A. I don't know.

Q. Well, you probably did, did you not, even though you don't remember? A. I believe if I say I don't know, that is the same as a possible statement I do not remember. I don't know.

Q. And when you went to Buenos Aires, I believe you stated that a written agreement was entered into between you and your brother, is that correct? A. No, this is not the case. I have said that I brought with me the draft which I submitted to my brother for approval, respectively for giving his opinion. In this matter my brother had only been asked finally to give his signature as strawman to this agreement which I concluded with
Tr 223 my sisters and brothers since, if an agreement was eventually reached, it would in fact be an agreement with myself. He did not have any other function in this matter.

Q. But this draft of which you talk was really the result of the arrangement that Judge Thomas had approved, is it not? A. Whether the draft was taken over word by word as agreement, this I did not examine, I left this to my brother and my son Otto. I do not know whether Judge Thomas in effect participated in the working out of the agreement at all. This was entirely superfluous. This was not, after all, a legal agreement, but an arrangement reflecting my private wishes to which my brother was so kind as to give his name - that means to act as strawman. It was an agreement, I repeat once more, which I concluded with myself because I was the donor of the presents, not my brother. They practically were

presents, given out of pure accommodation without any legal obligation All letters, I should like to add, which were necessary in order to make this agreement stick for outward appearances, that means to safeguard towards the tax authorities, all this was one complex This was all internally related In all these letters my brother only acted as strawman - that means giving his signature - and he was happy to do it.

Q. I think you are mistaken This was not a matter purely of your private wishes. Your sister Nora, your brother Walter, and others made claims against your brother and corresponded with him about them, don't you know that? A. Yes, I know it, but I am not mistaken It is exactly the way I just said Such a way had to be found because otherwise we would not have been able to meet the difficulties that existed at that time. It was a question of money which was abroad and this money I did not want to and could not utilize before but only after the revaluation law was issued in Germany, only then I had the possibility even to think about such an agreement or execute it There was absolutely no other possibility This was a pure - how is it called - camouflage All letters, I have said this before, which were written in this respect, formed one complex and cannot be separated Otherwise it would not have been possible for me to give my sisters and brothers one penny, because I could not do so from Germany I had to get at my foreign property first and this I could only do via my brother Edmund by having him give his name, only his name, not one penny

Tr 224 Q. Why couldn't you make payments from Germany? There were no restrictions against making payments from Germany in 1929, don't you remember that? A. As far as I know the foreign currency laws did not permit this

Q. I am afraid you are not recollecting correctly The exchange restriction did not go into effect until 1931, Mrs Stinnes, isn't that true? A I do not remember the single dates any more I know that since 1919, since the loss of the First World War, there were in Germany entirely unusual circumstances regarding money: inflation, deflation, tax laws, foreign currency laws of any kind, then again even stricter currency laws

at the time of Hitler - this continued all the time. What the difficulties have been in particular in 1929, this I would have to think over. It is impossible to expect me to say that.

Q. Mrs. Stinnes, I must ask you to stick to the subject. I am not talking about the inflation of 1923, I am not talking about the restrictions during the Nazi regime. We are talking of the year 1929 and I ask you whether it is not true that there were no restrictions in 1929 to making transfers of German currency abroad? A. I cannot say any more than I have said before.

Q. Well, tell me why did you want to make transfers abroad? Your sister Nora was in Germany, your brother Walter was in Germany, and all the heirs of your father were in Germany, except your brother Edmund. Is that not so? A. This is correct, that they were in Germany. But I have said before that only the revaluation laws gave me the possibility to make such payments to my sisters and brothers and for this I had to revert to foreign assets.

Q. Well, Mrs. Stinnes, how much money and other assets did you have in the Argentine or in Uruguay at that time, will you tell us? A. I
Tr 225 believe in these two countries, besides my claims through Hugo Stinnes Limitada, I had no liquid assets. I have not said that I would have recourse to these countries.

Q. And on your books in Muelheim your claims through Hugo Stinnes Limitada were carried at one Mar, were they not? A. In what way does that run counter to what I have just stated?

Q. Will you not please answer my question? A. I have answered it exactly with this statement.

Q. I ask you again. The claims that you had through Hugo Stinnes Limitada, Buenos Aires, were carried on your books in Muelheim at one Mark, were they not? A. This might be the case. I do not remember it any more. But what does this prove? A clever business man writes down dubious claims to one Mark in his books, but this does not mean that he does not have these claims. I still have those claims today and still assert my claim with the Argentine Government.

Q. Now, this dubious claim against Hugo Stinnes Limitada has been carried on your books since 1926 or thereabouts. Tell us, please, how much you have received on account of those claims to date? A. In spite of the fact it appears to me not to have anything to do with the matter under discussion here, and I therefore could refuse to answer this question, I am replying as a matter of courtesy. The suit is still pending - one generally does not receive anything before a decision has been made.

Q. Now, as a matter of fact, your claim isn't against Hugo Stinnes Limitada at all, isn't it? Don't you have a right to claim from Arnold Otto Meier, who today hasn't made any payments on account of your claim? A. I also could refuse to answer this question. Nevertheless, I say I am acting in cooperation with the firm Arnold Otto Meier.

Q. Mrs. Stinnes, I must say that your story of camouflaging your foreign assets does not make sense to me. You say you camouflage property abroad and here you are now testifying that you made an agreement in
Tr 226 order to have your foreign assets returned to you. What sense does that make? A. One thing has nothing to do with the other.

Q. Well, let us get back to your visit to Buenos Aires. Did your brother actually sign the agreement that was reached in Buenos Aires? A. Yes.

Q. And did you sign that agreement? A. I suppose yes, I do not remember it any more.

Q. I asked your attorney to produce one of those signed copies which I assume you must have brought back with you, and I would now like to show you a German text that purports to be that agreement and I ask you to look at it and to tell us whether that is a text of that agreement?

By Mr. Mann:

While the witness is studying the document I would like to report that a search has been made for the agreement, or a copy of the agreement, said to have been dated April 5, 1929, which was entered into in Buenos Aires. We have been unable to find the agreement or a copy of the same. A search has been made for a copy of the letter of January 20, 1929, which the witness is alleged to have written to Don Edmundo

Wagenknecht and which is said to be referred to in the April 5, 1929 agreement. A search has been made and we have been unable to find a copy of that letter.

A. That is probably the case.

By Mr. Albrecht:

Then I think I will introduce this agreement into the record and will ask to have it marked as Wagenknecht Exhibit Number 3.

By Mr. Mann:

Tr 227 We will be furnished copies, Mr. Albrecht?

By Mr. Albrecht:

Sure.

By Mr. Mann:

And a translation?

By Mr. Albrecht:

Yes.

At this point the witness was excused.

By Mr. Albrecht:

I am also offering a translation of the agreement and will ask to have it marked Wagenknecht Exhibit Number 3a.

By Mr. Mann:

Mr. Albrecht, pursuant to your request for production, I hand you now a declaration showing the participation of the petitioner in the Hugo Stinnes o. H. and I hand you a statement of the capital and participations of the Hugo Stinnes o. H.

By Mr. Albrecht:

Thank you. Do you wish to have this statement returned to you and have photostats put into the record, or would you care to have this put into the record?

By Mr. Mann:

We will supply you with photostats or copies.

By Mr. Albrecht:

Thank you very much.

Adjourned on September 22, 1955

at 5:30 P.M.

Tr 228 Mr Albrecht Continuing the Cross-Examination

on September 23, 1955 at 2:00 P.M.

The witness was not present at this time.

By Mr. Albrecht:

Mr. Mann, you have produced the originals of the following 4 documents which I would like to have marked as Wagenknecht's Exhibits 4a, b, c, d for identification:

(a) Letter dated March 17, 1953 from Dienststelle fuer Auslandsvermoegen addressed to Claere Hugo Stinnes;

(b) Copy of letter dated June 25, 1953 addressed to Dienststelle fuer Auslandsvermoegen and signed Hugo Stinnes.

(c) Letter dated June 29, 1953 addressed to Firma Hugo Stinnes by the Dienststelle fuer Auslandsvermoegen;

(d) Copy of letter dated July 6, 1953, addressed to Flyktkapitalbyran Stockholm, and signed Hugo Stinnes.

In accordance with our agreement I hand you back the originals and offer 4 photostats of these 4 letters for the record in their place.

You have also produced a photostat of a notarial protocol before Notary Dr Beer which is dated December 18, 1929 and relates to the sale by Claerenore Stinnes to her brothers Hugo and Otto of her share of her father's estate I would like to offer that photostat as Wagenknecht Exhibit Number 5 for identification

I would like to call your attention to the fact that this is not the final agreement between the parties and it is my understanding that there was a supplement thereto that was recorded on July 26, 1935 before the Notary Dr. Hermann Kocks of Duisburg I wish you would be good enough to see whether that supplement may be located so that the record may be completed with respect to this transaction.

By Mr. Mann

We will search for the supplement

By Mr. Albrecht

Tr 229 Mr. Mann has also produced a copy of the notarial protocol dated March 3, 1927 and taken before Notary Leveloh relating to the sale by Hilde Stinnes of her interest in her father's estate to her brother Hugo. I offer this document for the record and ask that it be marked Wagenknecht Exhibit Number 6 for identification.

Mr. Mann has also produced a number of Property Tax Declarations and Property Tax Returns of the tax payer commencing with 1925 and running through 1953. So that no confusion may arise in translating the German names of these reports it is stipulated by counsel that all reference to Property Tax Declarations (Vermoegenssteuererklaerung) refer to returns prepared by the tax payer and filed with the tax authorities, while all reference to Property Tax Returns (Vermoegensteuerbescheid) refer to the notifications received by tax payer from the tax authorities confirming the amount of taxes payable by the tax payer.

Mr. Mann has produced the Property Tax Return for 1925 and 1926 which I shall not offer for the record as it appears to be incomplete. There apparently is missing from this report an annex to which reference is made therein. In any event, in the two pages of this report that have been produced there is no detail of the assets or properties which the tax payer claims as her own and on the basis of which her tax has been computed. Let the record show that this return states the taxable property of the petitioner for the calender year 1925 to amount to RM 42,975,305. I feel that the Court is entitled to have some evidence before it of what the witness' property consisted of around the time that she inherited the estate of her husband. Unless such a detailed list is produced and offered for the record I shall be unable properly to cross-examine the witness and will therefore have to reserve all my rights to object to any use or offer that may hereafter be made of the petition.

By Mr. Wieferich:

It seems to me that in any event what has been produced ought to be marked for identification so that in the event of a controversy over whether this production is sufficient or is, as you characterize it, insufficient, the Court ought to have before it what was produced. I do not want to

interrupt your marking of Exhibits, except to state that certainly on this one I will reserve my right to mark it as an Exhibit at the appropriate time.

By Mr. Albrecht:

I would ordinarily be inclined to agree with you, Mr. Wieferich. However, I am somewhat reluctant to clutter up the record with what
Tr 230 would appear to me on its face to be an inadequate document. The property tax report just referred to is a printed form that has a lot of figures on it but gives us no details as to what property is owned by the petitioner and therefore it would appear to me that we are not getting anywhere by putting this into the record. Conceivably upon further search the missing annex can be found and then, of course, this report would in my view constitute good evidence. Furthermore, I might say that quite a number of these property tax declarations and reports have been produced here and some of those are complete and con. in detailed statements of the witness' assets and those I propose to put into the record. Now, with those remarks you may reach a different conclusion

By Mr. Mann:

Mr. Albrecht, I will call your attention again to remarks which I made a day or so ago to the effect that our producing, pursuant to your oral requests, any documents whatsoever is in the nature of an accommodation to you and a desire on our part to expedite the taking of this deposition. I believe that you have procedures other than oral requests to bring about the production of documents. We have, however, to the best of our ability attempted to comply with your oral requests. I regret that there is a page missing which is something in the nature of an annex to the document which you have just described. However, we can only produce what we have. But you may be assured that we will look again to see if this page to which you refer has been inadvertently overlooked. Also I am advised that a tax return never sets out in detail the property on which the tax is levied.

Mr. Albrecht, I must take exception to your very unusual remark in reserving the possibility of objecting to this deposition ever being used

in evidence because a list of properties, such as you describe, has not yet been produced. I refer you to my earlier remarks on the production and I can reiterate again, we can only produce what we have. We have made an exhaustive and extensive search and a list of the nature of that which you describe has not been found.

By Mr. 'Albrecht:

Of course, if any documents that I have asked the production of you do not care to offer, then it does seem to me that it is necessary at least for you to indicate whether such a document is in possession of the witness so that we might hereafter start such procedures as are permissible under the Federal Rules to require their production.

Tr 231 I should add that the previous report was described as a definitive report. Mr. Mann has also produced an amendment to the property tax report for 1925 and 1926 and that report too has missing any statement that would give the detail of the property owned by the petitioner and I have therefore the same objections to it as to the definitive report and I must reserve all my rights with respect to the deposition by reason of my inability to use a detailed list of the witness' property for purposes of cross-examination. I think, however, the record should show that on this amended report for 1925 and 1926, the total amount of the witness' taxable property for the calender years 1925 and 1926 is reduced to RM 38,097,405.

By Mr. Mann:

Mr. Albrecht, in order that we perfectly understand each other and make the record clear for others, I want you to know that when I state that a search has been made and a document has not been found that means that such a document is not in the possession of the petitioner and is to be taken to mean that.

By Mr. Albrecht:

Mr. Mann, I wholly accept your statement and I hope nothing I have said has offended you. My remark was addressed to something you had said to the effect that I had other remedies available to me to obtain the documents I sought, and I therefore wanted to lay the foundation at least for a production of documents which you felt you could not furnish me.

By Mr Mann:

I mentioned that you did have other remedies, Mr Albrecht, but I mentioned also - and I wish to reiterate at this time - that we have made a search, or are making a search for each and every document which you have requested and I believe that we have or will have produced all of them with the exception of the petitioner's Will which I have shown you privately and you have read, and which will be appended to the record in a sealed envelope. I mentioned your making improper use of oral production requests only to stress the extent to which we are cooperating in an attempt to expedite and terminate the taking of this deposition.

By Mr. Wieferich:

Tr 232 I don't know that the record clearly shows the agreement on the Will, but I would like to have the record reflect that while it is agreeable to me to use the procedure which you have just described, it will be necessary either to transmit a copy to the Attorney General or to let me have a translation of the same, or in some other way make available to the Attorney General what you have made available to Mr Albrecht and proposed to seal and file with this deposition.

By Mr Albrecht:

Well, I assume, of course, that any papers that will be furnished to the Attorney General will also be furnished to me

I come now to the definitive Property Tax Report of the witness for 1928 and I am prepared to return the original to you in accordance with our agreement and offer in its place as Wagenknecht Exhibit Number 7 for identification a photostat of the same provided that the photostat also include the last page - or rather the back of page 3 - in order to show the origin of said return. The entire photostatic reproduction of this return would then be 7 pages

By Mr Mann:

Mr Albrecht, is not the origin of the return shown on page 1?

By Mr. Albrecht:

No, I don't think so It is true that on the upper left hand corner there is the statement "Finance Office (Finanzamt) Muelheim-Ruhr", but

presumably that might be no more than a statement showing the district in which the tax is payable. The reverse of page 3, however, indicates that the return was mailed to the witness and that the sender was the Finance Office at Muelheim-Ruhr.

By Mr. Mann:

I must take exception to your request since I feel it completely unnecessary. I would suggest that we stipulate that it is a complete return and dispense with photographing this more or less blank back page.

Counsel have agreed to stipulate that such return was sent to the tax payer, Mrs. Stinnes, by the tax office at Muelheim-Ruhr.

By Mr. Albrecht:

Tr 233 Let the record show that there was not produced the tax payer's 1928 property tax declaration.

By Mr. Mann:

Mr. Albrecht, a search was made and it was not found. Insofar as we know it is not in the possession of the petitioner.

By Mr. Albrecht:

Mr. Mann has also produced the witness' property tax declaration for 1935. This declaration includes an annex of the tax payer's property and I shall therefore, in accordance with our agreement, offer a photostat of this declaration and ask to have its five pages marked as Wagenknecht Exhibit Number 8 for identification and I return the original of that declaration to you.

Mr. Mann has also produced the witness' property tax declaration for 1940 of which I offer a photostat for the record and ask that its five pages be marked Wagenknecht Exhibit Number 9 for identification and I return the original of the same to you.

Mr. Mann has also produced a definitive Property Tax Return for 1940. I find this return inadequate as it does not include any detail of the property owned by the witness, and I shall therefore not offer the same for the record.

However, in line with our discussion of a few days ago I am prepared to stipulate with counsel that there may be considered as part of

the record of this deposition a photostated copy of the definite property tax report of the witness for the year 1940, which was produced by the Attorney General upon the deposition taken of Otto Stinnes on July 22, 1953, at the American Consulate General in Duesseldorf This photostat is annexed to that deposition and marked Otto Stinnes Exhibit Number 1 and it is accompanied by a certificate dated December 18, 1946, signed by Hugo Stinnes as attorney-in-fact for his mother in which he certifies that the same is a true copy of the original in the files of Hugo Stinnes G. m. b. H.

By Mr. Mann:

Mr. Albrecht, I take it that the copy which you would like to have identified is at variance with the one which we have produced, all of which might be understandable since it appears that these documents may here-

Tr 234 tofore have been removed from the files for photostating. Is there a difference between the two documents?

By Mr. Albrecht:

If you will look at Otto Stinnes Exhibit Number 1 and compare it with the report produced by you you will note that the first page appears to be a photostated reproduction of the same Apparently the photostat shows that the witness had examined the tax return and had initialed the same, as the initials appear on the back of the first page Furthermore, the second page in the photostat would appear to be an exact reproduction of the tax form and on the back of the same apparently the initials of the witness again appear. The third page of the photostat is a statement entitled "Detail of Property of Mrs. Hugo Stinnes as of January 1, 1940". The back of that statement also appears to be initialed by the witness. Then follows another statement of properties named and which were part of what are called Effektenkonsortium 1 and Effektenkonsortium 2, and the last page of the Attorney General's Exhibit is the certificate of Hugo Stinnes.

By Mr. Mann:

Mr Albrecht, let us see if we can find the page which appears to be missing Also, I would suggest that since the witness is now here, we

stop our discussion of documents at the moment and proceed to examine the petitioner.

Mr. Albrecht Continuing the Cross-Examination at 3:00 P.M.

Q. We were talking last time of the agreement between you and your brother Edmund that was signed on April 5, 1929 in Buenos Aires. Let me ask you what credit your brother Edmundo had on the books of Hugo Stinnes o.H. at that time? A. I don't know.

Q. Well, the agreement referred to the credit standing on the books of the family business, did it not? A. I don't remember this.

Tr 235 Q. Well, look at it -- look at paragraph 4 of that agreement. A. I cannot remember these details.

Q. Well, Don Edmundo had other claims against you, did he not? A. If he had any claims in connection with this agreement which I concluded with him in Buenos Aires, then all this was only to be considered one complete whole and cannot be split up into a thousand different parts afterwards. It was a complete agreement which was concluded for reasons of expediency, in order to make it at all possible to put into effect the agreement.

Q. Well, I am afraid that I have to examine your statement in detail. The agreement refers to the reciprocal claims of the parties, does it not? A. Yes, all this belonged together and I think I stressed already yesterday that all these matters and correspondence which went forth and back between the various people who dealt with this agreement, formed one complete whole. And I, who only wanted to give something to my sisters and brothers in addition to what they had already received in the inheritance settlement, I, on purpose waited for the opportunity where any German laws made it possible for me to bring something into Germany from my foreign assets, and this free of taxes for everybody who participated in this agreement, for this I had to wait until 1929. How many letters went forth and back and what they contained in detail -- since I do not hold any files in order to correct or refresh my memory - I cannot give any opinion

to the details. I can only stress again, it is a complete agreement and the participants in this agreement were in the end satisfied. And the activity of my brother Edmund was solely to give his name, because just because I had to revert to my foreign assets, I had to use a foreigner. In this I followed the example of my husband - I have thought this over for many hours in the last days - who in the years 1921 to 1922 I believe, carried out the sale of securities in the same way and also used his brother-in-law as straw man. Not the sale of securities, I made a mistake, I mean the purchase of securities from my father, just in the same manner. Here again Don Edmundo acted as a straw man and therefore here too I had to use Don Edmundo - in order to keep the outward appearances. That is the situation, in this way the whole matter must be understood.

Tr 236 Q. Well, tell me why did the straw man, your brother, require an attorney-in-fact in this connection, in the person of Dr. Thomas? A. I don't know, for other purposes, I have no idea.

Q. But it is exactly Amtsrichter Thomas who dealt with your father in connection with the purchase of securities by Don Edmundo, isn't it so? A. I don't know that - that may be possible. At that time he was the attorney-in-fact for my husband, and my husband might have entrusted him with several matters in order to relieve himself. I cannot know this.

Q. But the correspondence in Muelheim shows that Amtsrichter Thomas was acting for Don Edmundo as his attorney-in-fact in connection with the purchase of his father's securities. Isn't that so? A. I cannot say anything regarding this.

Q. Don't you remember that? A. No.

Q. Well now, I cannot wholly believe your story, because in the agreement it is stated that Don Edmundo gives up property rights that he has, whereas in your letter of January 20, which is the basis of the agreement, the only things that appear are claims that you make. How do you explain that? A. I have said this before, that all these letters form one complete whole and cannot be judged or viewed one without the other. Without this the camouflage of this entire action would not have been

possible at all.

Q. Well now, tell us, if you can, how high your revalorization claim was against Don Edmundo? A. I cannot say this in detail.

Q. Well, do you remember your letter of January 20, 1929, which the agreement states was the basis of that agreement?

Tr 237 Q. Well, what was that letter about, will you tell us as much as you know? A. Since I do not possess any files, I cannot be familiar with the details. All this goes back a generation, I have said this many times before.

Q. Who wrote that letter of January 20, 1929? A. I don't know. If you have it you can give it to me.

Q. Well, I suppose your son Hugo wrote it, didn't he, after he had negotiated with Amtsrichter Thomas? A. I cannot say this. I can only say the truth - I don't know. Please ask my son Hugo about it.

Q. Well, your son Otto had nothing to do with the writing of that letter, did he? A. I don't know. I cannot even say what one or the other or both together have done. This does not interest me. These matters have long since passed. The entire matter is for me 100% completed. I was only interested at that time, and this I have kept in mind, that the agreement found the approval of my brother after he had examined everything and that he gladly followed my proposition to give his signature and with his name gave me the possibility to require payment of the money which I needed from the Edwagmij. He gave his name. I also know what I received at that time from the Edwagmij, because this was the finishing touch. Thereby everything was completed. All other details have long since become submerged in the nether world for me.

Q. Well, I show you what purports to be a copy of a letter dated January 20, 1929, addressed to Edmund Wagenknecht, Buenos Aires, and signed Claere Hugo Stinnes, and I ask you whether that is a copy of the letter you wrote to your brother and which is the basis of the agreement with him? A. Yes, this will be the letter which I wrote to my brother before going to Buenos Aires. The letter is worded very cleverly and forms the basis for the entire arrangement, which I said before, already

two or three times, was a camouflaged agreement. Since in order to get at my foreign property at all I had to present claims to my brother. Of
Tr 238 course, they too had to be fictitious. All this was thought out and worked out very cleverly and the result was the agreement which offered my brothers and sisters great advantages and freed the money for me out of my foreign holdings in order to be able to make the present to my sisters and brothers at all. I believe I said already yesterday, my brother in this entire transaction only gave his name and I gave the money from my fortune and therefor had to draw on my foreign assets, because at that time, in 1929, I did not have enough liquid assets in Germany. I also wished to use the opportunity of the revaloration to procure for me funds from my foreign holdings which I needed in Germany and otherwise I could not get. All this is one complete matter. No details in any of these letters did concern me, even though I could refresh my recollection regarding the details.

By Mr. Albrecht:

I now would like to offer for the record a copy of the January 20, 1929 letter, identified by the witness, and ask that it be marked Wagenknecht Exhibit Number 10 for identification, and I would also like to have marked for the record a translation of the same and to have the latter marked Wagenknecht Exhibit Number 10a for identification.

Q. I have asked your attorney to locate, if he can, your copy, or a copy of this letter of January 20, 1929, that may be in your files.

By Mr. Mann:

Mr. Albrecht, we have reported on that that a search has been made, it has not been found, and that it is not in the possession of the petitioner.

Q. Well now, if you will look at that letter which is now marked Wagenknecht Exhibit Number 10, I ask you to look at the first sentence in that letter. Is that a reference to your letter of January 10, 1929? A. This may be possible, I don't know.

Tr 239 Q. Well, look at your letter of January 10, which is marked Wagenknecht Exhibit Number 2, is that the letter referred to? A. Evidently, yes.

Q. Well now, coming back to your story that it was you who made payments to your brothers and sister, I wish you would tell us how much you paid to all your brothers and sisters to satisfy their alleged claims against you? A. I don't know that in detail. For my sister I believe it was 2000 Marks per month.

Q. Is that all that you paid her? A. I cannot answer this at the moment with yes or no. I don't know.

Q. Did you pay anything to anyone else? A. To my brother Walter.

Q. How much did you pay him? A. I don't know that.

Q. Did you pay anyone else? A. To myself, what was due to me. I cannot say anything else in this regard.

Q. Well, you have testified that a long trip you took to Buenos Aires for the purpose of having your brother sign some papers. And under the agreement executed at that time you state that it was you who made payments to your brothers and sisters. Now, I think that that was a sufficiently important matter so that you could tell us exactly how much it cost you to be, as you state, so generous to your brothers and sisters. Will you tell us how much you paid? A. I really cannot say it in detail any more.

Q. It is not important to have the exact amount, but it seems to me it is very important for you to be able to state approximately how much the total amount was you paid your brothers and sisters. Will you please try to tell us?

By Mr. Mann:

Tr 240 Let the record show that that is the third time Mr. Albrecht has asked the witness this question and she has answered to the best of her ability. She has testified that she does not remember it.

By Mr. Albrecht:

Mr. Mann, I don't think these interruptions help us because I shall ask the questions three or four times more if necessary.

A. No, I am not able to state this without any files.

Q. How much did you agree to pay Don Edmundo according to your story? A. I have not paid anything to Don Edmundo.

Q. Well, all the heirs of your father made a claim against him, did they not? A. All this was expressed that way in agreement with my brother Edmund.

Q. Well, but the correspondence in Muelheim shows the various claims filed against you and him as executor of your father's estate, isn't that so? A. I have written this to my brother myself - all this belonged to the entire camouflage of this matter

Q. Well, I think it really very important that we finally hear from you as to who all was involved in the so-called camouflaged action. Will you not tell us? A No. I cannot say this, since I do not know it myself. I have forgotten this too

Q. Well now, tell us, if you know, what the amount of the debt was that your brother Edmund owed to your father's estate? A. As far as I remember this was expressed in Argentine Pesos at the time - which was also only possible within the whole picture - I believe 2 or 350,000 Pesos.

Tr 241 Q. Well, Mrs Stinnes, that doesn't make much sense. Your father's estate was a German estate. The administration of the same was in Germany. The books of the estate were kept in Marks. Now why should the debt of any heir be expressed in anything else but German Marks, will you explain that? A. The heirs were also paid in German Marks.

Q. Well, isn't it a fact that Don Edmundo owed the estate nothing? And didn't the Will of your father provide that he was to get a one sixth share of the estate without any deduction whatsoever? A All this is correct, but I have stated before, what had been arranged in 1929 with my brother Edmundo had nothing to do with the settlement of the estate This had long before been completed still by my husband before 1924.

Q. But Mrs Stinnes, that is simply not true because claims were made against the estate subsequently and settlements were made subsequently and even in recent years additional claims have been made, isn't that so? A Several questions are combined here Regarding the last, that in recent years new claims have been presented, I don't know anything about it with the exception of the document of my nephew which was showed to me yesterday and which is of no importance to me For the rest I stick

to my statements and can only regret that you said to me I had not said the truth. I have said the truth.

Q. I regret very much that I am unable to agree with you and I wish that you could produce some proof in support of your statements. Now, tell me please, what was the amount of your revalorization claim against your brother? A. I believe I have already given the total amount. It was converted to German Mark; and amounted to about a million.

Q. Well now, part of that claim arose out of your purchase of Ella's and Erika's claim, did it not? A. This might be possible. I really can only repeat, I do not remember any detail any more.

Tr 242 Q. Well, how much did you pay Ella and Erika for their claim? A. I don't know.

Q. You see, Mrs. Stinnes, I am also trying to test your memory. We were talking about that yesterday. Do you still not remember? A. I remember the agreement. I do not remember that an amount was given. I am sorry, I would gladly state it.

Q. And part of your revalorization claim against your brother Edmundo was based on the claim that could have been made by Hermann, is that not so? A. Yes.

Q. And what would have been the amount of Hermann's claim? A. If it really would have been stated, it would have amounted to millions and millions. This I don't know. I only know that a certain sum was fixed which I do not remember and that the interests therefrom were allocated to my sister Nora.

Q. Now, when you told us the story about the business enterprise on the La Plata, you never would admit that there was a firm in Montevideo bearing your brother's name. Your letter of January 20, marked Wagenknecht Exhibit Number 10, speaks of Edmund Wagenknecht Limitada. Wasn't that your brother's firm? A. Yes, this came back to me when refreshing my memory that he must have still had that firm at that time. I was under the impression that at that time he did not have any firm in Montevideo any more. I have said before that I have forgotten many things and that I don't know many things, but I am continuously reflecting how

and where to refresh my memory. I really don't do anything else any more.

Q. But you see that is the reason I address so many questions to you, namely to get you to correct some statements that I believe to be wrong. Now, in your letter of January 20, 1929, you referred to the claims against your brother and his firms. Will you please tell us what firms of your brother you had in mind in writing that letter? A. I don't know.

Tr 243 Q. Well, he must have had more than one firm, didn't he? A. I don't know.

Q. Do you mean you don't know or you don't remember? A. Well: let us say I don't remember.

Q. Well now, tell us, if you can, how much credit was granted to your brother Edmundo at the time that he bought an interest in the Giesemann finkas? A I don't know.

Q. Well, your letter of January 20, (Wagenknecht Exhibit 10) advises your brother that you expect to have the credit that was granted him for that purpose revalorized. Have you no memory of the credit that had been granted to your brother? A. No.

Q. Well, in any event, the interest that your brother had acquired in the Giesemann finkas is the interest that was sold a few years ago by your sister-in-law, Mrs. Wagenknecht. Isn't that so? A. This cannot be the case because the finkas belonged to my husband who bought it, I believe, in 1919, the first year after the First World War. At that time my brother Edmund again only played the straw man, if he is mentioned in this connection.

Q. But then why all this nonsense in your January 20 letter to talk about a revalorizing of a credit that had already been repaid to the family business? A. I have stated before that everything that was mentioned in those letters or correspondence had to be expressed just this way in order to make the entire action possible. The entire matter, everything from a to z constituted a camouflage.

Q. Well now, the credit to your brother Edmundo had been granted

by the Hamburg firm which in 1929, however, was part of the American Stinnes Corporations. How is it that you lay claim to a revalorization of a credit granted by the Hamburg Company when it was no longer a part of the Stinnes business in Germany. A. I cannot say anything regarding this - I don't know.

Tr 244 Q. Now, you also complained in your letter of January 20, of the various financial demands made against you as one of the executors of your father's estate. Will you please explain those? A. I have said before that I do not recollect the details. This also belongs to the complete whole.

Q. What was the claim that you state Albert Jensen made against you at that time? A. I don't have any files - I cannot examine this.

Q. Well, I think what it is important for us to learn is why you ask your brother to make a settlement with you on behalf of a claim by Albert Jensen. Will you tell us about that? A. I don't know. I don't have any files in order to check such questions.

By Mr. Mann:

I want the record to be clear that some time ago the so-called letter of January 20, 1929 was handed to the witness and she, after answering the one question, handed it back to Mr. Albrecht. I make this statement merely to show that the witness does not have the letter before her.

By Mr. Albrecht:

I don't understand by what warrant you characterize Wagenknecht Exhibit Number 10 as an alleged letter. The witness has testified that that was a copy of the letter that she sent to her brother.

By Mr. Mann:

I am sorry, Mr. Albrecht, I only wanted the record to show that the document was not before the witness.

Q. Now, as a matter of fact, Mrs. Stinnes, after the agreement with the bankers in 1926, you had a very limited income, is that not so? A. I don't know the amount of the income. It was sufficient in any case

Tr 245 to keep the standard of living which I had always maintained.

Q. Of course you were wholly dependent on your income at that time, because outside of your house in the Schloss-Strasse you had no other capital assets, did you? A. Who asserts that fact?

Q. Well, tell us what other capital assets you had at that time? A. I cannot say it in detail.

Q. Well, the bankers forced you to put up all your capital assets, did they not? A. I was urged, not forced by the bankers to transfer as many values to them as was necessary in order to secure the loan which I wanted. Respectively that it was secured by these values as collateral.

Q. Well, this was at a time when the German Banking Consortium refushed to extend any more credit to the Stinnes business and didn't the bankers thereupon demand that you supply them with a complete and detailed list of all your capital assets? A. I have just said, capital assets to such an extent that the desired loan was supported. Beyond that I was entirely free, in Germany and abroad.

Q. Did you tell the bankers that you claimed ownership of Fundus? A. I have just said that I have been entirely free with my foreign property. In addition, everything that we had listed you had in your papers, in the Industries and Corporation prospects. Therein everything is contained in the greatest detail.

Q. But you see, again your statement is not accurate. You yourself have testified that among the assets that were turned over to the American bankers, was the KKKK Coal Company in Copenhagen and also a Stinnes Company in Rotterdam and there probably were other foreign assets. And so I ask you, did you tell the bankers that you calimed ownership to Fundus?

Tr 246 A. My statement was correct. The KKKK belonged to the Hugo Stinnes G. m. b. H. and the others too, as far as I know and remember. Fundus had nothing to do with the GmbH - the branches of the G. m. b. H. abroad, of course.

By Mr. Mann:

Mr. Albrecht, in view of the very heavy documentation that you desire to place in the record, would it be possible for us to meet for that purpose on Monday morning, say at 10:30 A. M.?

By Mr. Albrecht:

Certainly.

By Mr. Wieferich:

That is fine.

Adjourned at 5:30 P.M. on September 23, 1955
Counsel Meeting again on September 26, 1955 at
10:30 A.M.

By Mr. Mann:

Mr. Albrecht, with respect to your offer to stipulate the genuineness of the definitive Tax Return for 1940 and to make it a part of this record, I am on the basis of what you have told me off the record prepared to so stipulate. As I understand it, the document which you have came from the files of the Hugo Stinnes G.m.b.H. which is not available to us. The form which we have shows the exact figures and taxes paid, but does not contain the inserted sheets.

By Mr. Albrecht:

I understand that Mr. Wieferich has agreed, upon his return to Washington, to supply the Consul with a photostat of Otto Stinnes Exhibit I, so that the same may be made a part of this record of this deposition and marked Wagenknecht Exhibit Number 11 for identification.

The 1935 Property Tax Declaration has already been marked as Wagenknecht Exhibit Number 8 for identification. Since no Property Tax
Tr 247 Report for that year has been produced I assume that it will be agreeable that we stipulate that there may be made a part of the record of this deposition, as Wagenknecht Exhibit Number 12 for identification, the witness' Property Tax Return for 1935 which is annexed to the deposition of Hugo Stinnes taken in Duesseldorf on September 7 and 8, 1954 in Civil Actions 1734-52 and 9420-52 pending in this court, and which is marked Hugo Stinnes Exhibit G. I should also indicate that to the photostat of that Exhibit is annexed a certificate signed by Hugo Stinnes on December 18, 1946, certifying that it is a true copy of the original tax return in the files of Hugo Stinnes G.m.b.H.

By Mr. Mann:

We will stipulate the genuineness of this document. Since it is in the files of the G. m. b. H. it is not available to us.

By Mr. Albrecht:

I understand that it is agreeable to all counsel concerned that Mr. Wieferich will subsequently supply the Consul also with a copy of this Exhibit for incorporation in the record of this deposition.

There has also been produced by Mr. Mann a definitive Property Tax Return for 1946 which I shall not offer as an exhibit, since it seems to be incomplete and does not include any annexes or statements revealing the details of the capital assets which the witness claims as her own. I would like the record to show, however, that from this return it appears that no tax was payable by the witness for 1946 since the taxable property of the witness is stated in red on the return at RM 196,000.

There has also been produced the amended Property Tax Return for 1946 which I also shall not offer as an exhibit for the same reasons. The record should show, however, that on this amended report, which is dated October 9, 1952, the witness' total capital assets are stated to amount to RM 1,603,000 and that her annual capital property tax amounts to RM 39,620.

Let the record also show that for the same year 1946 no Property Tax Declaration of the witness has been produced.

By Mr. Mann:

Mr. Albrecht, my examination of these two returns does not show any indication that there was any annex to them which could be missing.

Tr 248 Accordingly I would appreciate your telling me the basis for your believing that an annex or a schedule is missing.

By Mr. Albrecht:

Well, Mr. Mann, my effort is directed to making available to the Court and to us a statement of the witness' property which she inherited from her husband and I have therefore asked for the production of any kind of a statement giving the details of the property included in the estate of the witness' husband and subsequently owned by the petitioner as part

of her inheritance and for all years thereafter. The earlier declarations and returns already referred to by me last week speak of annexes which were not included in the forms actually produced. I have been shown by German counsel who is a specialist in tax matters the instruction sheets for the filling out of Property Tax Declarations. It is apparent from these that in such declarations a full disclosure must be made in detail concerning the property of which the tax payer claims ownership. And these instruction sheets are quite specific and refer not only to tangible property but also to foreign properties which have been seized or vested and foreign securities that have had to be delivered to the Military Occupation Authorities. Some of these instruction sheets go still further in requiring the tax payer to list even such property, the location and status of which is unknown or uncertain. Now, I don't suppose either of us can tell with precision what should or should not appear in the various Property Tax Declarations and Reports, but it does seem to me obvious that somewhere and somehow and on some form or other the German Tax Authorities must have received a detailed statement of the property holdings of the tax payer. I think I have previously stated for the record that my request was designed to bring out into the open such detailed statements so that they may be placed on the record.

The claim has been made by the witness that all of the property claimed by her in the claim filed with the Office of Alien Property in February 1955 (Petitioner's Exhibit Number 12) was property which she had inherited from her husband as his sole heir. Now, in this proceeding to perpetuate the witness' testimony it would seem to be essential that there should be placed on the record either by the petitioner herself or by one of the expected adverse parties an authentic document of some sort containing the details of the property owned by the witness' husband and inherited by the witness fairly contemporaneous with the year 1924 when witness' husband died. Unless such detailed property statement is pro-

Tr 249 duced and made a part of the record of this deposition I must, of course, in discharging my duties to the parties whom I represent by appointment of the Court, reserve all rights to object to any use or offer of

this deposition I must make this reservation since, without the production of any proof so far of what property the witness has inherited, I am of course completely unable to conduct a proper cross-examination.

By Mr. Mann:

Mr. Albrecht, I suggest that the remarks which you have just made are improper and have no place in this record. Those remarks consisted of argument and did not give an answer to my question. I call your attention to the fact that we are taking the witness' deposition and not yours. Insofar as your remarks did concern tax forms you addressed them to declarations. The documents about which I asked you are returns. With respect to your reservation which you had previously stated, I can only say that it is apparent to me that you want to keep the record open and your cross-examination seems to have been designed to that end since the beginning. Now I will reiterate the statement I made the last time you made your reservation, namely, we can only produce what we have. You may be assured that we are continuing to search for the various documents which you have requested. If we find them, they will be produced. If we don't have them, we cannot produce them.

By Mr. Albrecht:

I have also requested the production of the Property Tax Declaration for 1948 and this has apparently not been produced. The next tax form which has been produced on behalf of the petitioner is her Property Tax Declaration as of January 1, 1949. I shall offer this declaration for the record, even though it appears to be incomplete in that there is no annex number 1 attached to it. There is, however, a statement marked annex 2, apparently initialed by the witness which is annexed to the Declaration. I offer this document as Wagenknecht Exhibit Number 13 for identification and would like the record to note furthermore that no Property Tax Return for 1949 has been produced.

By Mr. Mann.

Let the record show that no request for the Property Tax Return for 1949 was made. I refer specifically to the record at page 122.

By Mr. Albrecht:

Tr 250 My notes show that I requested the Property Tax forms for all years subsequent to 1940. If my notes should be in error, then I think it should be understood that my request for the production of such tax forms is now made.

By Mr. Mann:

Your notes obviously are in error. We will search for this form.

By Mr. Albrecht:

There has also not been produced the Property Tax forms for the year 1950.

There has, however, been produced the witness' Property Tax Declaration for 1953 which would appear to be complete and I would like to offer the six photostated pages of this Declaration to be marked Wagenknecht Exhibit Number 14 for identification.

By Mr. Mann:

I believe we mentioned earlier, Mr. Albrecht, we were unable to find the Tax Return and Declaration for 1950.

By Mr. Albrecht:

The record should furthermore show that there has not been produced the Property Tax Return for 1953 which the witness must have received from the tax authorities.

By Mr. Mann:

Again the record at page 122 does not show that you requested the tax return for either 1950 and 1953, but only the tax declarations for those years.

By Mr. Albrecht:

There have also been produced a large number of Income Tax Declarations and Income Tax Reports filed by the tax payer for the past several decades. I regret if, due to any misunderstanding as to my request, you have been caused unnecessary trouble to produce these documents. My notes show that I requested the first Income Tax Return of the Tax payer after her husband's death, the first one after the 1926 loan and either her return for 1953 or 1954.

I have examined all of the tax forms which have been produced and

I am prepared to place on the record as Wagenknecht Exhibit Number 15 for identification the Income Tax Declaration for 1953. As an example of the inadequacy of the various tax forms produced, it would appear to me that either in the Witness' Income Tax Declaration or in the Income Tax

Tr 251 Return received by her from the tax authorities, there would necessarily have to be incorporated a statement or breakdown of the various amounts of income reported from various sources by the tax payer. It seems extremely unlikely that the German tax authorities would accept, for purposes of income taxation, an over all statement by the tax payer of her income, without requiring the details respecting the capital assets that produced the same.

I shall not offer any other income tax forms relating to the income taxes paid by the petitioner since they would not appear to contribute any substantial information for the record. I therefore return the various forms which you have produced, Mr. Mann.

I would also like to place on the record at this time as Wagenknecht Exhibit Number 16 for identification a photostat of Otto Stinnes' Power of Attorney dated February 7, 1952.

I would also like to offer as an Exhibit, if there is no objection of a certified extract of the commercial register (Handelsregister) of the Lower Court Muelheim-Ruhr, relating to the partnership Hugo Stinnes o.H. I would like this Exhibit to be marked Wagenknecht Exhibit Number 17 for identification.

Mr. Mann, I believe you have expressed yourself as agreeable to producing for this record the forms which the Allied Military Government required to be filed by all German citizens. These documents I will describe for you as follows:

Form MGAX (1) - Declaration of Assets and Obligations pursuant to Article II, Military Government Law No. 53, Foreign Exchange Control. The form filled out on behalf of the witness was dated July 27, 1945 and was presumably signed by Wilhelm Unger as the legal representative of the witness. To this form were annexed 3 annexes entitled as follows:

(1) Property or Property Rights not previously listed in this report

which are located or effective outside Germany and are owned or controlled directly or indirectly, in whole or in part, by a person in Germany;

(2) Securities and other evidence of ownership or indebtedness issued by persons outside Germany;

(3) Claims, other than cash balances and any evidence thereof, owned or held by or for any person in Germany against a person outside Germany whether expressed in German or other currency.

Tr 252 The other form which should be produced is known as MGAX (2) - Property Delivered to the Reichsbank against Receipt in accordance with Military Government Law Number 53 Foreign Exchange Control. This form is dated July 20, 1945 and addressed to the Reichsbankstelle, 20 Kaiserstrasse, Muelheim-Ruhr, and signed by Mr. Unger.

By Mr. Mann:

We will produce those documents.

Adjourned at 12:30 P.M.

Mr. Albrecht Continuing the Cross-Examination on September 26, 1955 at 3:00 P.M.

Q. Mrs. Stinnes, we have put on the record an extract from the Commercial Register (Handelsregisterauszug) as Wagenknecht Exhibit Number 17 and in the same there appears the name of Ernst Giesemann as Prokurist. Will you tell us who Ernst Giesemann is? A. He is still today an employee of the firm.

Q. Is Ernst Giesemann related to Joaquim Giesemann? A. Yes, he is his youngest brother.

Q. You have testified that you have now pending a claim or law suit against the Argentine Government, based on your claim against Hugo Stinnes Limitada of Buenos Aires. Will you tell us when that claim was filed? A. I believe it was when I was in Buenos Aires the last time.

Q. Why was a claim filed against the Argentine Government? A. Because it had confiscated my property.

Q. That was a claim and not a law suit? A. I do not know the legal

difference between the two.

Q. Well, did you merely file a claim with the Argentine Government or did you file a law suit in a court against the Government or one of its agencies? A. I have instructed an Argentine lawyer to claim the

Tr 253 rights to the Hugo Stinnes Limitada. In which form it has been done I do not know.

Q. Did your claim ask for the release of anything else besides your claim against Hugo Stinnes Limitada? A. No.

Q. Will you be good enough to look in your records at Muelheim and produce tomorrow, if possible, a copy of the claim you filed with the Argentine Government? A. I will do my best to do so.

Q. Well now, let us discuss for a moment Edwagmij. You have testified that your husband organized that Company, did you not? A. Yes, I stick to my statement.

Q. Well now, have you any written evidence in your possession today that would prove that as the heir of your husband you are the owner of Edwagmij? A. I would have to try to find this out.

Q. You have not heretofore tried to locate anything that would show that you are entitled to the ownership of Edwagmij? A. No, I have not done so so far because for me this represents such a fact that I did not even get the idea to look for further proof

Q. You see, Mrs. Stinnes, I am troubled by your answer. If I were to say to you now: Mrs. Stinnes, I own your entire interest in Hugo Stinnes o. H., what would you say? A. That this was a mean lie.

Q. Of course, it would be, unless I could show you something - which I can't - to show that I was the owner. Isn't that so? A. I would like to see that proof.

Tr 254 Q. Well, Mrs. Stinnes, I think the Court as well as we would like to see the proof of your ownership of Edwagmij. That is the reason I ask you that question and I wonder whether you can't assist us?

By Mr. Mann:

I object to the form of that question as being too vague for the witness to answer.

A. I think I have given enough testimony last week which prove my ownership in Edwagmij. Since Mr. von Linsingen, who in 1929 was the manager of Edwagmij - since you have so many documents you should also have among your papers one document which I remember. Unfortunately I haven't got it myself but I remember it exactly, a letter to Mr. von Linsingen in which I ask him to put at my disposal via the securities which my husband had bought from my father and via other securities, the necessary money to execute the settlement which I intended to make with my brothers and sisters.

Q. Well, I think you said that Mr. von Linsingen left Edwagmij in 1939, didn't you? A. Yes, the document I have referred to is from 1929 and at that time Mr. von Linsingen was still with the Edwagmij.

Q. Well, what I am coming to is, after 1939, and that is 16 years ago, who, if anyone has been giving you reports about what Edwagmij has been doing? A. I think you forgot the fact that in the year 1939 war broke out and that because of the war I could not get any news from abroad. Besides, I and the gentlemen of the Edwagmij had to be particularly careful since the Edwagmij was part of my camouflaged property.

Q. The war has been over for ten years. Tell me which gentlemen of the Edwagmij are you referring to? A. I do not refer to any gentleman in particular, after Mr. von Linsingen left, but I refer to a statement which I have made at repeated occasions with regard to my camouflaged foreign property, that my son Hugo, who until 1950 had my Power of Attorney, told me time and again when I asked him about this or that of my foreign property: I cannot tell you anything about this, and it is better if
Tr 255 you don't know anything about it, so that you can raise your hand at any occasion and say: I do not know anything about it. Apparently he was afraid that I couldn't keep silent, but this may be as it may be.

Q. Well, assuming all that to be true, let us not forget that it is now over five years ago that you withdrew Hugo's Power of Attorney. Now, in the five years that Otto has had your Power of Attorney you must have learned something about Edwagmij, if it really was your property. Who were the gentlemen in Edwagmij to whom you have made reference

in your answer just now, when you said you did not refer to any particular gentlemen?

By Mr. Mann:

I object to the question on the ground that it is repetitious and the witness has answered.

A. No, because I did not meet the successors of Mr. von Linsingen. When I tried to talk to Mr. von Linsingen on a certain occasion when both of us were in Switzerland, he on purpose avoided any opportunity to let me speak to him. That doesn't speak for a very clear conscience of his.

Q Two years ago Mr. Wieferich and I took the testimony of your son Otto in this Consulate and when I asked him about Edwagmij he replied as follows, and I quote: "I have no interest whatsoever as stockholder and never had. The only business transaction which I had as a partner of the Hugo Stinnes o. H. with the Edmund Wagenknecht's Handelmaatschappij is to be seen out of the books of Hugo Stinnes o. H." Is that answer correct in your view? A. He is speaking about himself and not about me.

Q. Well, he is also talking of Hugo Stinnes o. H. of which you own the majority interest, you have testified, is he not?

By Mr. Mann:

Tr 256 I object to that characterization of the statement made in the question.

A. Yes, the Hugo Stinnes o. H. did not have an interest in the Edwagmij. It was a camouflaged firm - or is a camouflaged firm.

Q. Well, then your answer to my question as to whether your son Otto's statement is correct is in the affirmative, is it? A. That the Hugo Stinnes o. H. had no interests and no knowledge of Edwagmij, yes.

Q. Alright. Mr. Wieferich and I also took the statement of Mr. Unger two years ago and when I asked him the question whether any shares of Edwagmij stock were held in the securities account of any members of the Stinnes family, he answered, and I quote: "There was never any participation in that Company and investment in this stock". Is that statement correct? A. Yes, he didn't know any better. He never had anything to do with the Edwagmij.

Q. Then your answer to my question is that Mr. Unger's statement is not correct, is that so? A. I have said that he, according to his knowledge, was not able to make any other statement.

Q. Then you do not care to say that Mr. Unger did not answer correctly, do you? A. Mr. Unger only spoke for the o.H., he was not able to speak for the family and its foreign property. Therefore, when being asked this question, he could not say anything else.

Q. It has been testified too that Mr. Unger had complete knowledge with respect to the securities accounts of the partners of the Hugo Stinnes o.H. and as such he must have had knowledge of all investments including the foreign investments of the partners. Is that not so? A. He must not have had it, he was not informed about our foreign properties, only insofar as it was listed in my tax reports.

Q. And by your tax reports you mean, of course, both your income tax returns and your property tax declarations (Vermoegenssteuererklaerung), is that not so? A. The tax declarations or property tax declarations which I have to submit according to German laws.

Tr. 257 Q. Well, let us get it all down on this record. You now want to declare that every property tax declaration (Vermoegenssteuererklaerung) that you have had to make, from at least 1924 to the present date, is incorrect and does not include the foreign properties which you claim were held for you in trust. Is that true? A. I cannot make out this question. How can I testify on tax declarations from the year 1924 on. That is impossible. My tax declarations were on principle not made out by myself but by the legal department of the firm and then submitted to me for signature. And since I trusted my legal department - and that rightly so - I gave my signature without hesitation. I cannot say anything about the contents of the tax declarations, even less after so many years.

By Mr. Mann:

Mr. Albrecht, I don't believe the witness understands the question.

Q. Well, why don't you just tell us at least whether your various tax returns were correct or incorrect returns? A. I think I answered

this question fully with my last statement.

Q. I must ask you to tell us whether your tax returns were correct returns or whether they were false returns? A. I have said in my statement before the last that my tax returns were made out by the legal department of my firm and that I trusted them. It is impossible to trust half way - either you trust 100% or not at all. This implies that I had to regard them as correct under all circumstances.

Q. Mrs. Stinnes, I did not ask you whether at the time you considered them correct. I ask you now, that you have stated you wish to unburden your conscience, whether your tax returns were accurate or whether they were false? A. I need not relieve my conscience - I have not to add anything to my last answer, it is complete.

Tr 258 Q. Mrs. Stinnes, I am sorry I have to say that it is not your judgement that will decide as to whether your answer is satisfactory. It will be for the Court to decide that and I must ask you to state for this record whether you now characterize your tax returns as false or as true? A. I am sorry, I stick to my answer, I have nothing else to add to this.

Mr. Albrecht:

Mr. Mann, might I suggest that you advise your client that I am entitled to get a yes or no answer to the question which I have asked the witness and to which she apparently refuses to reply.

By Mr. Mann:

As I have indicated, Mr. Albrecht, I do not believe that the witness understands the question which is being put to her. I ask Mrs. Stinnes to give you an answer to your question. However, if she does not understand the question she should feel free to say so in order that we might explain the question to her.

Q. You see, the only answer we now want is, were your tax returns correct or are they wrong? A. According to my opinion they were correct.

Q. Well now, you have testified that Edwagmij was named after your brother because it was a good neutral name and because your husband did not care to have his name associated with foreign companies. Is that cor-

rect? A. Yes.

Q. But that is not correct, Mrs. Stinnes, is it? Wasn't your husband's name associated with a lot of companies abroad? A. With camouflaged companies? I would have to think this over. I believe no.

Q. Well then you want to amend your previous statement, do you, by now saying that it was only with so-called camouflaged Companies that

Tr 259 your husband did not care to have his name associated, is that correct? A. I don't know to which previous statement of mine this has reference. I said that according to my knowledge and my memory camouflaged Corporations hardly bore the name of my husband.

By Mr. Mann:

Mr. Albrecht, as I indicated at the time that the questions were being put to Mrs. Stinnes concerning the correctness of her tax returns, I do not believe she understood the questions. During our usual recess which has just been completed I have been able to ascertain that Mrs. Stinnes did not understand the questions that you were putting to her and accordingly, in order to avoid confusion on the record, I suggest that you might re-open the matter with her.

By Mr. Albrecht:

I think I shall pass that subject for the present. I cannot believe that the witness did not understand my questions. I think the orderly procedure will be for you, upon your re-direct examination, to make an effort to set the record straight. Thereupon I shall obtain a further opportunity on re-cross to pursue the matter with the witness.

By the Witness:

May I first say something. During your last questioning I was evidently in a daze. I did not understand you the way you meant it. The tax declaration were, of course, considering the camouflaged property, entirely false.

Q. I am sorry to have to go back even before 1924, Mrs. Stinnes. The effect of your statement now is, is it not, that such tax returns as your husband filed before his death were also false? A. I am not at all familiar with that time and it is really an imposition to expect me to say

a deceased, who cannot say why he had done this or that in such a manner and not otherwise, to demand of me that I should declare that his tax dec-

Tr 260 larations were false. What has all this to do with the questions under discussion here?

Q. I am afraid it has a good deal to do with the matters under discussion. You yourself have testified, when you inherited your husband's property that you took over the situation surrounding the same that had been created by your husband. Is that a correct statement? A. Yes.

Q. So that it must now be made a part of this record that it is your statement that it was your husband who was responsible for this succession of false tax statements until you decided to relieve your conscience. Is that a correct statement?

By Mr. Mann:

I object to the form of that question. I consider that it is phrased unnecessarily harsh in order to disturb the witness emotionally and oppress her.

A. May I first put a question to you? With what did I decide to relieve my conscience?

Q. Well, I am sorry that you don't understand my question. Didn't you testify that you had come to the conclusion that you had done wrong and you wanted to make a complete breast of it and that you communicated your decision to the German Tax Authorities. Isn't that correct? A. You mean because I made the claim up the way I did, and because I informed the German Tax Authorities about it? This has long been said by me and settled. I did not relate your question to this. How was the second part of the question?

Q. I am asking Miss Koerner to re-read to you not the question which you have not yet answered.

Question re-read to witness.

Tr 261 A. If one wants to express it this way - for all I care.

Q. Now, in 1955, I think you testified, you caused to be shown to the German tax authorities the claim which you filed with the Office of the

Alien Property Custodian in Washington (Petitioner's Exhibit Number 12). Is that not so? A. Yes.

Q. With what German tax official did you communicate?

By Mr. Mann:

Objection. The witness has not testified that she communicated with any tax officials, but that she authorized her attorney to do that for her.

A. I believe with the German Finance Ministry or the head of the German Tax Office, I don't know.

Q. Well, if you personally did not make that contact, who did? A. My attorney-in-fact.

Q. By that title you mean your son Otto, is that so? A. I have decided with my son Otto to take this step. Whom he caused to execute it, I don't know. I only know that it has been executed and this is the most important thing.

Q. Was there turned over to the German tax officials a copy of your claim filed in Washington? A. That was precisely what was handed over to the German tax authorities.

Q. Did any correspondence pass between you and your attorney-in-fact or any lawyer employed by you with the German tax authorities? A. I have not had any correspondence in this regard.

Q. Will you please answer the balance of my question?

By Mr. Mann:

Tr 262 I object to the form of that question as I do not think the witness is competent to testify as to what others may have done.

Q. Well, Mrs. Stinnes, I wish you would look in your files or in the files of your attorney-in-fact, your son Otto, to see whether you can locate copies of the correspondence that passed between you or him or any lawyer acting for you or him and the German tax authorities, and I wish you would be good enough to produce tomorrow, or as soon as you conveniently can, copies of all such correspondence and any enclosures that may have been contained in the same, so that they may be a part of

the record of this proceeding. A I shall endeavor to procure it, if anything is available in writing.

Q. If there is nothing written in existence then I wish you would ascertain from your attorney-in-fact the name of the person in the German tax department with whom this matter was discussed, so that it may be communicated to us and be made a part of the record of this proceeding. A. I have taken note of your wishes.

Q. Thank you very much, Mrs. Stinnes. Will you now tell us when contact was made with the German tax department for the purpose of informing them of your incorrect tax returns? A. I cannot give the exact date - a short time ago I can only say a few weeks ago. I don't know the exact date.

Q. Before that was done, did you or your son Otto consult a lawyer? A. I don't know.

Q Well, Mrs. Stinnes, do you want the Court to believe that you did not consider, together with your son, whether it was necessary for you to consult with a lawyer before you decided to make contact with the German tax officials? A I cannot give any details on this. The fact that it was done satisfied me.

Tr 263 Q. But you see, it won't satisfy the Court and I would like to have the record show, if possible, just what conversations were had between you and Otto respecting the contact made with the German tax officials. Will you please tell us of these conversations as near as you are able to do? A. Nothing more is to be said about this. My son Otto advised me to do this and I told him that it is alright with me. I agreed to this and thus the matter was settled. No further conversations were held in this respect than that he informed me it had been done. I don't know any more.

Q. I think the Court as well as we will have great difficulty in believing, that after Otto talked with the tax people, or had someone else talk to them on your behalf, that he did not report to you what the tax people told him. Can't you remember of what you were informed as to what the tax people said when they heard that you had filed incorrect tax returns? A. I have nothing to add to my last reply

Q. Wasn't it reported to you that the tax people discussed among other things the fact that past due taxes would have to be paid, that there might be serious penalties inflicted on you for your conduct in the course of the 31 years in failing to file correct tax returns? A. I am looking forward with calm to what might happen in consequence of my disclosure of the truth.

Q. You mean you are looking forward with calmness to the fact that your reputation will suffer thereby, that your husband's reputation will also suffer, and as well as to the fact that serious penalties might be exacted of you personally. Is that correct?

By Mr. Mann:

I object to the form of that question as I consider that the question as such has no bearing on the matter under consideration here and that the question is designed only to annoy and oppress the witness. A. I

Tr 264 have said I am looking forward with calmness to the potential consequence of my love for truth. I can add, I trust that the name of my husband and his reputation will not suffer in the least and that the leading gentlemen of the tax authorities, or the Finance Ministry, whoever is competent to deal with this, will have so much understanding for the manifold difficulties which confronted me after the death of my husband - will have so much understanding that they will treat me accordingly.

Adjourned at 5:30 P.M. on September 26, 1955
Mr. Albrecht Continuing the Cross-Examination
on September 27, 1955 at 2:00 P.M.

The witness was not present at this time

By Mr. Albrecht:

I have brought with me the original of Wagenknecht Exhibit Number 1, for identification, which I would like to exhibit to you and I am also hereby supplying you with a photograph of the same and I assume that in accordance with our arrangement it will be possible for me to retain the original.

By Mr. Mann:

I believe, Mr Albrecht, that under the agreement, when it was felt that something might turn on an original, we stipulate that at the request of any party, the original would be placed in the record. Articularly in view of the fact that the document appears illegible and the fact that you have shown the witness and read to her what purports to be a reconstruction, and since the photograph which has been offered for the record is certainly illegible in parts, I feel that this is a case where we must have the original in the record.

By Mr. Wieferich:

It seems to me that this document is going to be one of the fundamental exhibits offered in this deposition and I believe that it will be necessary to the satisfaction of all parties and the Court, to establish the accuracy of the purported reconstruction and also the authenticity of the original. Now, I make this observation at this time because, if the original is submitted with the deposition which may or may not be used for many years, since it is a perpetuation proceeding, we may have to get a special order of the Court in order to have the original tested in the respects I have mentioned I am agreeable to any satisfactory arrangements

Tr 265 that counsel wish to work out. My own suggestion is that it would be far better now to attach one of the photographs to the record to be transmitted by the Consul and for Mr. Albrecht to retain custody of the original until we can get back to the United States, but that we should stipulate then that it will be submitted to experts mutually agreeable to all of the parties represented here

By Mr Albrecht:

I appreciate your practical approach to the problem. The original four sheets that have been exhibited to you and Mr Mann are patently fragile and are in danger of disintegrating. As it has been my intention to submit the originals to chemical and other experts for the purpose of reconstructing the writing, or rather to make it more legible, so as to confirm the alleged reconstructed text that I have read into the record, it would not be altogether feasible to have the Consul firmly annex these fragile sheets to the record of this proceeding I am agreeable to the sug-

gestion that in proceeding, as I have indicated, to obtain the assistance of experts in the United States, that such experts shall also be agreeable to you and Mr. Mann. You see, it must be apparent to all of us that if these four fragile sheets are annexed to the record, they will suffer from that fact, will probably disintegrate, and make impossible the reconstruction which I have in mind and which it would seem to me the Court would be very much in favor of having.

By Mr. Mann:

I am agreeable to Mr. Albrecht keeping possession of the document upon his assurance that the document will not be out of his possession. My agreement is on the condition that within 60 days after the three of us have returned to the United States we agree upon the experts with whom this document should be submitted and the procedure for submitting the same.

By Mr. Albrecht:

That is satisfactory to me.

By Mr. Wieferich:

I also agree.

By Mr. Albrecht:

Tr 266 I have just come into the receipt of photostats of two documents that relate to the Asa Property in Sweden. I had intended to ask the production of the originals by you, Mr. Mann, but I would like to suggest, with a view of saving you unnecessary trouble, that after you and Mr. von Papen have had a chance to examine them, whether you would stipulate to the authenticity of these documents and if so I am prepared to offer them as exhibits to be annexed to this proceeding. These two documents are the Notarial Protocols executed by the director of finance of the Hugo Stinnes firm.

By Mr. Mann:

Which firm, Mr. Albrecht?

By Mr. Albrecht:

The Hugo Stinnes firm - that is the o. H., that is the partnership, the Hugo Stinnes firm.

By Mr. Mann:

Mr. Albrecht, with your permission we will keep these for a short while in order to permit an examination and identification by the witness, perhaps during the recess, and after such has been done we will tell you whether we are in a position to stipulate the authenticity of the documents.

By Mr. Albrecht:

If you are unwilling to stipulate as to the authenticity of these two documents, then I would like to suggest that there be produced the original or copies from the files of the witness or the Hugo Stinnes o. H. of the documents which I describe as follows:

(1) Notarial Protocol taken before the Notary Rudolf Schmits at Muelheim-Ruhr on May 4, 1949 and signed by Wilhelm Unger. The document bears the number 245 of the 1949 document file.

(2) The Notarial Protocol taken before Dr. Wilhelm Baganz at Muelheim-Ruhr, on July 2, 1954, and signed by Wilhelm Unger. The document bears the number 224 of the 1954 document file.

By Mr. Mann:

Mr. Albrecht, you requested a copy of a letter written by the petitioner to her son Hugo Stinnes Jr., and dated July 13, 1950, together with
Tr 267 a copy of a letter which Hugo Stinnes Jr. wrote to his brother Otto Stinnes under date of July 10, 1950, both of which were referred to in Petitioner's Exhibit Number 13b. I hand you now the first mentioned letter which is a file copy. Since the second letter has reference to a letter written by Otto Stinnes to Hugo Stinnes Jr. under date of June 25, 1950, we are giving you a copy of that together with the letter of July 10, 1950 from Hugo Stinnes Jr. to Otto Stinnes.

Mr. Albrecht, you have requested a certified copy of the will of Consul Edmund Wagenknecht. As I have indicated to you earlier I am advised that it takes approximately three weeks to obtain such a certified copy. Accordingly I hand you now a copy which has not been certified and I ask that this be placed into the record with leave that the certified copy be placed into the record when such has been obtained, and if you see fit to place this in the record we will add a certified copy when such is obtained.

Mr. Albrecht, you asked for a statement of Mrs. Stinnes' participation in the Hugo Stinnes o. H. together with a statement of the assets and participation of the o. H. I hand you those statements now.

Pursuant to your request that you be furnished with a statement of Mrs. Stinnes' personal account with the Hugo Stinnes o. H. I now hand you a statement of that account.

You asked for the partnership agreement existing among the partners of the o. H. We have been unable to find the signed copy of that agreement. However, I hand you a typewritten copy of that agreement. If necessary, I am sure we can have the witness identify it.

As we have all seen, the matter of this deposition has been very hard on Mrs. Stinnes. Her health has deteriorated with the result that her doctor has now ordered her to take a week's rest during which she is to be treated and given a check-up in Hamburg. I have exhibited to you the doctor's certificate. I will have it copied and a copy can be appended to the record. At my inststence Mrs. Stinnes is appearing here today to be examined. After today's session, however, she will take the required rest. I suggest that we stipulate to reconvene here on October 5 at 3:00 P. M. for the purpose of continuing the examination.

By Mr. Wieferich:

Tr 268 I will so stipulate provided the record is clear that the suspension of this deposition is, of course, the responsibility of the petitioner.

By Mr. Albrecht:

I am assuming, of course, that as the decision to take a recess until October 5 has been made by petitioner, that all conditions attached to the taking of this deposition and as incorporated in the orders of the Court and the stipulation of counsel, will remain in full force and effect.

By Mr. Mann:

For the purpose of producing documents requested by Mr. Albrecht, it is stipulated that counsel will convene tomorrow at 10:30 A. M.

The witness appeared at 3:00 P. M.

Q. Mrs. Stinnes, you corrected your previous testimony yesterday by stating that it was only in connection with the alleged camouflaged

foreign companies in which your husband did not care to have his name appear, is that correct? A. I believe I said that in general my husband did not wish to give his name for this.

Q. Well, as a matter of fact, there were quite a number of companies abroad that did not have his name. Is that not so? A. Yes, there was quite a number of them.

Q. And they were not all alleged camouflaged companies, were they? A. No, for instance the companies belonging to the G. m. b. H., no.

Tr 269 Q. Well, I thought I would like to point out to you, if it is a fact, that your first statement was probably more accurate that your husband preferred not to have his name appear in connection with foreign companies Is that correct? A. I believe this will be the same thing, if I said he preferred or in general - he acted according to his principle.

Q. Well now, Mrs. Stinnes, before you or your son Otto or your lawyer on your behalf went to the German tax authorities, did you first have computed the total amount of the taxes which were wrongfully withheld from the German Government for the past 30 years or more? A. You mean the copy of my claim, yes, of February of this year?

Q. No, I am asking you whether you know or had computed the total amount of the taxes which you failed to pay to the German Government for the past 30 years or more? A. No, I have not taken that trouble. It was sufficient for me to submit the copy of the claim. And for the rest I should like to add at this opportunity that during the last 30 years tax amnesties have been proclaimed by the German Government on several occasions, the date of issuance of which I do not remember. It would have been a very complicated matter to figure out, all that would first have had to be deducted. The German tax authorities will know how to help themselves.

Q. Then you actually do not know today how many taxes you have withheld from the German Government. Is that true? A. Yes.

Q. And you didn't ask your lawyer or your accountant (Revisor) or your director of finance to make any estimate of the taxes wrongfully withheld? A. No

Q. Well, did your son Otto tell you anything about what the tax authorities may have said with respect to obtaining an estimate of the wrongfully withheld taxes? A. No.

Tr 270 Q. Well now, after Otto talked with the tax authorities, what did he tell you about his conversation with them?

By Mr. Mann:

I object to the form of the question since there has been no testimony that Otto talked to the tax authorities. I ask that my objection be translated and given to the witness.

A. I don't know of any conversation. Did Mr. Mann say that Otto had such a conversation?

Q. Let me put it another way. You haven't yet told us whether it was Otto or your attorney, or who it was that talked on your behalf with the tax authorities. But certainly, whoever did talk to them, must have reported to you or Otto and I want to know from you what was told to you and by whom, respecting the conversations that had been had with the tax authorities. A. My attorney, Mr. von Schlabrendorf, has submitted on my and my son's behalf a copy of the claim - I believe it was end of August - to Oberfinanzrat (Ministerialrat) Gurski and in the same way to the appropriate official in charge of the Duesseldorf tax authorities. Whether conversations have taken place at this opportunity, this I don't know.

Q. Well now, to have it entirely clear on the record. You have stated that in 1950 your conscience started troubling you and hat you wanted to relieve your conscience, and now it appears affirmatively that you waited more than five years before you got around to notifying the authorities of your tax derilictions. Is that not so? A. Yes, this had good reasons. After 1950 I had great difficulties and it took a very long time to examine everything that had been done in the past under the full Power of Attorney of my son Hugo since 1924. It was impossible to clarify it any quicker, or at least what we believed to be a clarification so far.

Tr 271 Q. Well, have you got a nice report all written up as to your investigations in the past five years? A. No, my lawyers have prepared that.

I would not be able to do it.

Q. Well, I wish you would produce, as soon as you are able to do so, a copy of the report which your attorneys made on the basis of your investigations during the past five years. Will you please be good enough to do that?

By Mr. Mann:

I object to that production request on the ground that it has no purpose other than to annoy, embarrass and oppress the witness.

A. I shall inform my lawyers about your desires.

Q. No, I did not ask you to inform your attorneys, I asked you to be good enough to produce here a copy of the report which your lawyers made to you. Will you please do that?

By Mr. Mann:

Mr. Albrecht, wi h respect to this very unusual request which you have made of the witness, I want the record to show that my firm has conducted a considerable correspondence with Mrs. Stinnes' attorney-in-fact and her German attorney. As you yourself should know, that correspondence is privileged and the witness will not produce it.

By Mr. Albrecht:

Mr. Mann, I am amazed to hear you put on the record the statement that the lawyer's communications or advices given to their client is privileged if the client consents to the revelation of such advice and documentation. I have made a demand on the witness to produce this information. I have not made any demand on the attorneys to produce anything.

Tr 272

By Mr. Mann:

The witness has told you that she would inform her attorneys of your desires. Having been informed I have answered for the witness and have claimed the privilege for her.

By Mr. Albrecht:

Let the record show then, that unless we receive full information of precisely what advice the witness has received from her attorneys,

covering her re-examination during the period from 1950 to he present day respecting the activities of the previous 30 years, I shall be unable properly to cross-examine the witness and I shall therefore have to reserve all my rights to object to any use or offer that may hereafter be made or attempted, of any part or of the whole of this deposition.

By Mr. Mann:

Mr. Albrecht, I am glad that you made the record as clear as you did. It has been evident to me ever since you started your cross-examination that you were doing everything in your power to keep this deposition open so that it could not be used. And moreover I think the record is clear to the extent to which you have attempted to oppress this witness by your various oral requests for production. I am well aware of the fact that you do not want this deposition read into evidence at any time. However, I think you will have to find a better ground than the one you have chosen to keep it out. I would suggest that Mr. von Paper be permitted to give a summary of this exchange between Mr. Albrecht and me.

By Mr. Albrecht:

That is perfectly agreeable to me and I am confident that anything that Mr. von Papen will tell the witness will be proper for her to hear. I think, however, it is unnecessarily delaying the examination of the witness and please note that I am not responsible for that delay.

By Mr. Mann:

I note the suggestion you made off the record that the witness could read the German record and I would like to point out to you that the German record does not contain these exchanges between the lawyers.

Tr 273 Q. Well, you have had the assistance of Otto during these five years, have you not, in ascertaining the facts of the last 30 years? A. Yes.

Q. So that Otto has been informed during all this time of what has happened during the last 30 years, isn't that so? A. I cannot state any details regarding this -- all this is still going on.

Q. But Otto was your attorney-in-fact and you told him everything, didn't you? A. Yes, I have spoken with him regarding these matters as far as it was necessary. I should like to add, for the rest all this lies in

the hands of my, respectively our lawyers.

Q. Well, all I am getting at is, he has known of this failure to pay taxes to the German Government for these many years, isn't that true? A. The same way as I.

Q. And yet, in 1953 when Mr. Wieferich and I examined Otto, Mr. Wieferich had occasion to ask him whether your property tax return (Vermoegenssteuerbescheid) for 1940 was correct and Otto answered as follows: "Mr. Wieferich, if you get a 'Vermoegenssteuererklaerung' made out to the German tax authorities, you can be sure that it is exact; it reflects correctly the actual happenings. If that would not be according to the actual facts, we would have been all in jail in the meantime." Was that a correct statement for Otto to make? A. Otto will know what and why he has testified this.

Q. I am not asking you what Otto knows, I am asking you whether that was a correct statement for Otto to make? A. I cannot say any more to this.

Tr 274 Well, let me tell you once again that this statement by Otto was made in the year 1953 and he then stated that your property tax declaration was correct. What have you to say to that?

By Mr. Mann:

Let the record show that the actual document which was attached to the deposition of Otto Stinnes and which was under discussion at the time was a tax return. It is my understanding that a tax return is made out by the German Government and is in the nature of a bill. Moreover, I would object to this question on the ground that the witness is not competent to testify concerning what Otto Stinnes thought.

By Mr. Albrecht:

Well, Mr. Mann, I think you have forgotten that while Exhibit Number 1 attached to the deposition of Otto Stinnes is the Definitive Property Tax Return, (Vermoegenssteuerbescheid) for 1940, there has meanwhile been put on the record in this proceeding Wagenknecht Exhibit Number 9 which is the Property Tax Declaration (Vermoegenssteuererklserung) for 1940 and it is the latter document which was prepared by the tax payer and

filed with the tax authorities and on which the Property Tax Return (Vermoegenssteuerbescheid) was based that subsequently was mailed to the witness.

A. Two things. In two years one can clarify many things which were before unknown. Second, I ask myself, what have my tax declarations to do with these conversations. This is only a matter for me and the German tax authorities and I am not responsible to anyoody else on that, which I have done correctly or incorrectly.

Q. I am sorry to have to correct you, but the Court in this proceeding will be very much interested in this subject of failure to pay taxes. Now, let me ask you who else besides Otto knows of this plan, extending over 30 years, to withheld the payment of lawful taxes to the German Government? A. If you speak of 30 years, then I should like to point out

Tr 275 that after the year 1925 to 1950, that is for 25 years out of these 30 years, my son Hugo was exclusively the person who was responsible for these declarations - exclusively. He demanded this right for himself and demanded of me that I had no knowledge whatsoever. You can take this into the record.

Q. But how can you blame Hugo for everything. In the first place they were your tax returns and in the second place, according to your story, it was your husband who first withheld taxes from the German Government. Isn't that so? A. Nobody can be the judge of what happened at the time of my husband. The statute of limitations has run on that a long time ago, and properly so. I do not tell any story, but I state facts, undoubtable facts. From the year 1925 on, respectively from the moment - I am not sure at the moment whether he did not have fully in hand for two years his Power of Attorney because he had to withdraw from the management of the Corporation due to personal matters for which he was to blame and what happened during this time this way or the other, this is not the question, I cannot recollect this in detail, I don't know whether he has held my full Power of Attorney during that time, but I believe so - at any rate as long as he held my Power of Attorney, until 1950, he spoke with authority on all important matters and did not allow anybody to interfere.

And he demanded of me, for instance just when I asked him about foreign property, he continuously requested me not to put any questions but to leave it to him and to be satisfied with this. At that time he still had my confidence and therefore I also continued to give it to him. But to hold me responsible for it today, this I must reject.

Q. Mrs. Stinnes, we too, want to bring all the facts into the record, but I don't see how you can put all the blame on Hugo when you have testified that when your husband died you took over an accomplished fact, and therefore it must follow from that that it was your husband who started on this plan to deprive the German Government of taxes. Isn't that so?

Tr 276

By Mr. Mann:

I object to the form of that question and I object to any further questioning of the witness concerning what her husband may have done concerning his taxes. The witness has been asked about this any number of times and she has answered. She has made it perfectly clear that she dislikes blaming her dead husband in any way for what may have been done and I can only suggest that the purpose in repeating this line of questioning is to embarrass, annoy and oppress the witness.

By Mr. Albrecht:

It may not be necessary to reply to your last remark, but I have the distinct recollection that when at the end of the direct examination the witness made her confession, she stated in so many words that she had taken over a situation created by her husband and that she had then continued in the same course. I think it is desirable both for our standpoint and the standpoint of the Court to have it shown that there is no doubt in the witness' mind respecting the illegal conduct of which her husband has been guilty and which she continued thereafter for so many years.

A. This is partly true. Definitely after the 10th of April 1924 I have taken over everything the way I received it from my husband as his heir and have tried to continue the same way with my sons relating to business matters. But it is also a fact that even in 1925/26 everything was turned upside-down through my two eldest sons and the firm got into

such difficulties - which is all contained in the transcript - that I had to obtain a loan and thereafter, after this had been well achieved, one had to start on quite a new basis. Therefore one cannot say that from 1924 on until today, everything continued on the same basis as with my husband. That this could happen, for this also my son Hugo must also bear a good part of responsibility. The time after 1926, the consequences of which I still have to bear today, cannot be compared in the least with the time when my husband was living and it is unfair to refer to this in any way.

Q. I don't understand why you should have had any difficulties after 1926. All you needed to have done would have been to bring back your
Tr 277 alleged foreign properties that were camouflaged, according to your story, and then you would have been in position to file correct tax returns and to pay taxes. Is that not so? A. No, that is not so. In addition, please forgive me for saying that what you have said I should have done is an assumption for which you cannot give any proof since you do not know the circumstances nor can judge them.

Q. I would like to suggest to you that you did not have any properties abroad that you have stated were camouflaged and that you have no proof of any kind whatsoever that will support your story. Do you agree with that statement? A. No. If proofs should be missing today, then I shall have them at my disposal whenever they may be required.

Q. I am really very sorry to say that that answer does not satisfy me and I must ask you if you have any proofs that support your story that you own property abroad that was camouflaged, that you produce them so that they may be made a part of this deposition. Will you please tell us whether you can do that? A. I believe my claim names in detail everything which I consider to be my property and it is superfluous to give any more details of which I might not even be aware. My lawyers, and I have said all this before, have been instructed to clarify these matters and I am the last one to claim any property which might be listed in my claim today, if the lawyers should find an error of mine. It is their task too to produce relevant proof.

Q. I must state again, I am not interested in what you claim. What

I want to know is, what proof have you in support of what you claim? I have asked you repeatedly to bring to this hearing such proofs as you might have in support of your story that you own a lot of alleged foreign property and I must give you this last opportunity of telling me what proof you have and of bringing it the next time you appear here so that I may have an opportunity to look at the same and to question you with respect to it. Will you please tell me whether you intend to produce such proof?

By Mr. Mann:

Tr 278 Mr. Albrecht, I think that the record is clear that we have tried best to meet your oral production requests However, I do not believe we are required to do so Nevertheless, I ask that you specify any documents or any evidence which you would like produced in order that a search may be made I suggest to you, Sir, that your question and your request are too vague.

By Mr Albrecht

You seem to have forgotten, Mr. Mann, that the record is replete with my requests for proofs that I have requested, that I have repeatedly requested, that would support the witness' statements that she owns this or the other property I am, of course, specifically interested, I have previously requested repeatedly, that proofs be presented for my and our examination here, that would support the witness' claim to ownership of the Atlantic Assets Corporation, of Edwagmij, of the Giesemann finkas, and the other foreign properties which she claimed were owned by her but kept abroad in a camouflaged state. The only answer that I can get out of the witness is that she claims those properties and that her statement does not require any proof She testifies that she has no proofs and that she has given the task to her German and American attorneys to locate the proofs, the whereabouts of which are unknown to her. I am therefore asking the witness once more, to give her this opportunity of producing evidence of her ownership of her alleged camouflaged foreign properties so that we might examine them and question her with respect to them It seems to me that there is nothing more important relating to this proceeding than to have produced the proof that I have requested.

By Mr. Mann:

I believe that the record shows, or will show after tomorrow morning's session, that each time you have made an oral production request we have complied with it or we have told you that such was not in the petitioner's possession. Now, I ask that you in lieu of making another time consuming speech, be good enough to specify the documents or other evidence for which you would like us to conduct a search.

By Mr. Albrecht:

Your inquiry is not altogether pertinent. I have asked the witness what proof she has in support of her statement so that I may ask for its production.

By Mr. Mann:

Tr 279 The record will show you have also asked her to produce.

A. I shall endeavor to present proofs within such time, but I doubt that they will be available in such a short time.

Q. Well, I understand that after this evening we are taking a short recess and I hope that you will give the necessary instructions to your attorney-in-fact or to others to locate, if possible, the proof that I have requested that will support your contention that you own certain alleged camouflaged properties abroad. A. I shall pass on your wishes.

Q. Thank you very much. Now, since 1950 further income tax declarations and property tax declarations have been filed by you with the German tax authorities and I assume that these declarations too have been incorrect. Is that so? A. I don't know, I cannot say anything about it. I have to check this first.

Q. Who has the responsibility of preparing, signing and filing your tax declarations since 1950? A. As usual, the legal department.

Q. With the help of your director of finance? A. I suppose so.

Q. And with the knowledge of your attorney-in-fact? A. He leaves this, the same way as I myself, to the competent gentlemen, exactly following the example of my husband. And I would like to add, and in the same way as it was done by my son Hugo as long as he held my Power of Attorney.

Q. Your story then is, is that right, that the director of finance and the director of the legal department had to take the entire responsibility for the correctness of all tax declarations, and the partner of Hugo Stinnes o.H., namely you and your two sons, had no responsibility whatsoever. Is that your story? A. I have nothing to add to that than what I said before.

Tr 280 Q. Well, do you mean to say that you have no responsibility for your tax declarations that are placed before you for signature or that other people sign under your Power of Attorney? A. Either I trust my employees, or I do not trust them. There is no half way measure. Therefore, I take it as self understood that they also would assume the responsibility for what they state in the tax declarations.

Q. So, if we now find that your tax declarations for the last five years are incorrect, and too little tax has been paid, it is your story that your employees will have to take the responsibility and that so far as you are concerned you have no responsibility in the matter. Is that true?

A. Please repeat the last question.

Question re-read to witness.

A. Practically no.

Q. What do you mean by no as a practical matter?

By Mr. Mann:

I must object to this entire line of questioning as to who is responsible for the false tax returns as I believe you are asking the petitioner to state a conclusion of law.

A. This is quite clear.

Q. Well, it is not clear to me and I wish you would tell us.

A. I do not give any other reply. I also believe that it is not justified to have the entire matter under discussion here. Of what concern is all of this to the gentlemen present here? They are being examined in such a way by the tax authorities so that I shall be able to rely on their testimony.

By Mr. Mann:

Tr 281 Let the record show that my firm, acting at my suggestion, has

made a motion to terminate this deposition. I would like for the record to show that I informed Mr. Albrecht a week ago Monday that I was considering such a motion and expected that such would be made. I am today in receipt of a telegram from my firm stating that the motion to terminate has been set down for hearing in Washington in the United States District Court for the District of Columbia on October 4 next.

By Mr. Albrecht:

I don't know the reason why this statement is made upon this deposition. At the time that Mr. Mann informed me that he might consider bringing an application to terminate this proceeding, I informed him that my office had already received instruction, in the event that I was away from New York and engaged upon this deposition for more than 30 days after August 15, to bring on an application before the Court for the deposit of further security to protect my clients from any expense in connection with the taking of this deposition. My firm has filed an application with the Court in Washington last Tuesday and on the same day, I believe, notice was given to petitioner's counsel. The fortuitous adjournment of this deposition for a period of one week coinciding as it does with the application of petitioner's counsel in Washington would now seem to give support to the application made on behalf of the proposed adverse parties whom I represent.

By Mr. Mann:

I just want the record to be clear that I thought I had advised you that I had no alternative other than to seek a Termination Order when we failed to agree to a stipulation setting out a schedule for terminating this deposition.

By Mr. Albrecht:

It was last Thursday that we failed to come to an agreement that would have enabled us to stipulate.

By Mr. Mann:

That is correct.

Adjourned at 5:30 P.M. on

September 27, 1955.

Tr 282 Counsel Meeting on September 28, 1955
at 11:00 A.M

By Mr. Mann:

Mr. Albrecht, pursuant to your oral production request I hand you petitioner's definitive Property Tax Return for 1925 and 1926 and petitioner's amended Property Tax Return for 1925 and 1926. I believe the record shows your observation that a page attached to the definitive tax return for 1925/26 was missing. That is explained by the fact that the annex to that form was inadvertently stapled to the definitive tax return for 1928 (Wagenknecht Exhibit Numbe: 7). I hand the Consul a copy of petitioner's definitive tax return for 1928 which does not have the improper annex and I ask if you will be good enough to stipulate to this change. If you will, I believe the record is clear on the missing page for 1925/26 and corrects the exhibit presently marked for identification Wagenknecht Exhibit Number 7

By Mr. Albrecht:

I have examined the exhibits in question and papers you have produced, and I agree that through some inadvertence the annex in question was attached to the wrong tax return. Of course I stipulate to correct the record as you have suggested.

By Mr. Mann:

You have also requested that we furnish you with the petitioner's MGAX (1) Military Government form and MGAX (2) Military Government form. I hand you file copies of such forms.

Mr. Albrecht, you have pointed out that our property tax declarations for 1945 were missing and I believe I called your attention to the fact that the record did not show that they were requested. However, you have requested them and I now hand you petitioner's provisional Property Tax Return for 1946

I hand you petitioner's definite Property Tax Return for 1946. I also hand you petitioner's amended Property Tax Return for either 1946 or 1948 I am unable to determine which year

Lastly, in order to be certain that we have fully complied with your

request, I hand you Petitioner's Property Declaration for 1946.

Tr 283 You requested petitioner's Tax Declaration for 1948. The only return which we have been able to find is the one referred to above which I believe to be an amendment of the 1946 return. I am advised that Property Tax Declarations for 1948 were not filed, since that was the year of the change of the currency and that a basic declaration was filed in 1949 which was to be used for the following three years. You requested that we produce petitioner's Property Tax Return for 1950. I am advised that no Property Tax Return for 1950 or following years has been received from the tax authorities due to the fact that there is some disagreement concerning property valuations. In this connection I mention that this, I believe, accounts to some extent for the fact that Mrs. Stinnes was unable to understand certain of the questions put to her concerning tax returns, as I think she must have related it to this controversy.

I now hand to the Consul the medical certificate given by Professor H. Boettner under date of September 26, 1955, which was mentioned in yesterday's session as occasioning the petitioner's taking a few days rest at this time. I ask the Consul to be good enough to mark this as Petitioner's Exhibit Number 14 for identification.

We have a few other documents which you have requested and which are in the process of being photocopied. We will produce them at our next session.

Adjourned at 12:00 Noon on September 28, 1955.

Tr 284 Counsel Meeting on October 5, 1955 at 3:00 P.M.

By Mr. Mann:

Mr. Albrecht, in our session of September 27, 1955, you asked whether we would be willing to stipulate the authenticity of a notarial protocol taken before Notary Rudolf Schmits at Muelheim on May 4, 1949, and signed by Wilhelm Unger. For further identification the document bears the number 245 of the 1949 document file. We are prepared to stipulate the authenticity of that protocol.

At the same session you asked that we stipulate the authenticity of a notarial protocol taken before Dr Wilhelm Baganz at Muelheim-Ruhr on July 2, 1954 and signed by Wilhelm Unger. For identification that document bears the number 224 of the 1954 document file. We are prepared to stipulate the authenticity of that document.

You have requested the petitioner's Income Tax Declaration for 1953. I hand you that declaration herewith.

I believe, Mr. Albrecht, with my giving you that document we have complied with your production requests insofar as we are able to do so, except for the matter of certain additions made to the notarial protocol evidencing the sale by Claerenore Stinnes of a share of her father's estate. We know that there were certain additions to that protocol. We believe them to be in the possession of the petitioner. Our search heretofor has not located them, but if you wish we will continue our search.

By Mr. Albrecht:

Thank you, Mr Mann With respect to the last notarial protocol which you have mentioned and which amends the contract of sale by Claerenore Stinnes of her share in her father's estate, I have meanwhile had an opportunity of seeing a copy of the same and in my view it will not be useful to have the same made a part of the record I therefore withdraw my request for the production of such amendment to the original agreement.

By Mr Mann:

Tr 285 Thank you.

By Mr. Albrecht:

Mr. Mann has produced a photostat of a copy of a letter dated July 10, 1950 from Hugo Stinnes to Otto Stinnes which I shall offer as an Exhibit on behalf of the proposed adverse parties but with the agreement of counsel we shall mark this exhibit Petitioner's Exhibit 13d for identification. A further photostat of a copy of a letter dated June 25, 1950 from Otto Stinnes to Hugo Stinnes I shall offer and by similar agreement of counsel this letter will be marked Petitioner's Exhibit Number 13e for identification. Another photostat of a copy of a letter dated July 13, 1950

from Mrs. Claere Stinnes to her son Hugo I shall also offer as an Exhibit and counsel are agreed that the same shall be marked Petitioner's Exhibit Number 13f for identification.

I had requested the production of a certified copy of the Last Will of Consul Edmund Wagenknecht Sr., and of his wife so as to obviate any possible disputes between the parties as to what such Will contained. There has been produced by Mr. Mann a photostat of a copy of this Will and I shall be glad to have the same marked for the record, subject to such possible corrections as might appear if any differences should exist between the same and a certified copy. I therefore offer this Will as Wagenknecht Exhibit Number 18 for identification. With this Will there were also produced an amendment to the same and a number of formal statements of the executors appointing successors to the same. I am agreeable that these too be made a part of the record.

Mr. Mann has also produced a statement (Erklaerung) dated September 16, 1955 and signed by Mr. Unger on behalf of the firm of Hugo Stinnes, to which are annexed a statement of the firm's assets and a further statement of participations (Beteiligungen). I shall offer these documents as Wagenknecht Exhibit Number 19 for identification.

There has also been produced an original letter dated September 13, 1955, addressed to Mrs. Stinnes by the Hugo Stinnes Aussenhandelsbank which states the balances as of December 31, 1954 with which Mrs. Stinnes is credited and debited on the books of the Stinnes Bank. I don't think that this letter is helpful to us and I shall not therefore offer it for the record.

Tr 286 When I made the request on September 12 for an extract from the books of the Stinnes family partnership I asked to have produced not alone a statement showing the securities and investments of the partnership, but also the securities and investments in the personal account of Mrs. Stinnes. It is particularly important to me that a statement of Mrs. Stinnes' securities and other assets be produced. I thought it was also important that we have that information as of a date fairly close to her husband's death in 1924 as well as after the 1926 loan was granted in America and also a more recent statement of her security and other holdings for perhaps

1953 or 1954. Will you not be good enough to see whether this information can be produced for the record?

By Mr. Mann:

Mr. Albrecht, I am advised that all accounts of the partners of the Hugo Stinnes o. H. are kept by the Aussenhandelsbank. Accordingly the statement on the letter-head of the Aussenhandelsbank reflects Mrs. Stinnes' personal account with the Hugo Stinnes o. H. With respect to your request for extracts from the books in the 1920ies I believe that I have previously advised you that those records are no longer in existence and accordingly cannot be produced.

By Mr. Albrecht:

But Mr. Mann, if you will look at Wagenknecht Exhibit Number 19 for identification you will note there in annex 2 a list of securities and other holdings of the partnership. I had understood from a deposition previously taken of Mr. Unger, the finance director of the Stinnes family business, that there was also maintained in the offices of the partnership the private security accounts of the different partners. Annex 2 merely gives the assets of the partnership. Furthermore, if you will refer to the partnership agreement which I am about to have marked for the record, I think you will note from paragraph 2 of the same that when the partnership was formed, Mrs Stinnes did not place in her capital account with the partnership all of her assets. Hence it seems important to me that we should have a statement of Mrs Stinnes' securities and other investments, in fact all of her assets not part of her capital account in the partnership for 1924, for 1926, and for 1953 or 1954. Perhaps there may be some difficulty in locating some of these papers and please do not take it as any remark reflecting on you when I say that when our early demands were made for papers dating in the 1920ies and 1930ies, the first search did not reveal many but subsequently, you will agree, a good many tax

Tr 287 returns and other papers were found for those years and I would appreciate it, therefore, if a further search would be made because I must repeat again, it is of the utmost importance that we have as part of the record some statements that will show in detail the assets that were

contained in the estate of Hugo Stinnes Sr. that were inherited by Mrs. Stinnes and held by her thereafter.

By Mr. Mann:

I cannot agree with you, Mr. Albrecht, that subsequent searches have been productive of documents overlooked in our first search. I think you have reference perhaps to that part of the record around page 249 and 250 where your notes showed that you had made certain production requests, but such was not confirmed by the record. You corrected the record at that point, made the requests and we produced insofar as we could. I can only repeat again that no useful purpose can be served by searching for the records of the 1920ies of the Hugo Stinnes o. H. because they are no longer in existence. Nevertheless, we will re-examine the matter and attempt to clarify the statements concerning Mrs. Stinnes' recent personal accounts.

By Mr. Albrecht:

I shall now offer the partnership agreement for the Stinnes family firm known as Hugo Stinnes or Hugo Stinnes o. H. which Mr. Mann has produced. The copy produced is not a signed copy and it is merely marked "copy". It is dated May 18, 1931 and I assume, therefore, that the copy produced is the latest form of the partnership agreement. Is that assumption correct, Mr. Mann?

By Mr. Mann:

As far as I know it is.

By Mr. Albrecht:

I have been prompted to ask merely because there was a prior partnership agreement dated December 24, 1928 entered into when Mrs. Stinnes took her son Otto as a partner. The copy of the agreement you have produced is apparently a copy of the agreement entered into when Hugo also joined the firm as a partner. I shall ask to have this partnership agreement marked Wagenknecht Exhibit Number 20 for identification.

By Mr. Mann:

Tr 288 As I indicated at the time we gave you the copy we have been unable to find a signed copy. I have asked Mr. Otto Stinnes to search for such a

signed document and he has been unable to find it .. The one which I have given you is the only one found in the files of the Hugo Stinnes o H.

By Mr. Albrecht:

There has also been produced the Definitive Property Tax Return for 1925 and 1926 and I shall ask to have that marked Wagenknecht Exhibit Number 21 for identification.

Mr. Mann has also produced Military Government form MGAX (1) which Mrs. Stinnes filed under Military Government Law Number 53. I shall ask to have this document, together with the four annexes attached thereto, marked Wagenknecht Exhibit Number 22 for identification.

There has also been produced Military Government Form MGAX (2) which is a statement showing the property delivered to the Reichsbank by Mrs. Stinnes in accordance with Military Government Law Number 53. I shall ask to have that document marked Wagenknecht Exhibit Number 23 for identification.

Mr. Mann has also produced the Preliminary Property Tax Return of Mrs. Stinnes for 1946 I shall ask to have this document marked Wagenknecht Exhibit Number 24 for identification

There has also been produced the Definitive Property Tax Return of Mrs. Stinnes for 1946 I don't think that this tax return adds anything to the record and I shall not therefore ask to have it marked for the record.

Mr. Mann has also produced a re-assessment as of January 1, 1948 of the Property Tax Return of Mrs. Stinnes for the year 1948 I have examined the same and am of the opinion that it does not add anything to the record and I shall not, therefore, offer the same as an exhibit

There has also been produced what purports to be a Property Declaration for 1946 This Declaration appears to be incomplete in that the three pages submitted constitute only part B of what must be the entire Declaration. I shall, nevertheless, offer these three pages and ask to have hem marked as Wagenknecht Exhibit Number 25 for identification and would ask you, Mr Mann, to request that the other part of this Declaration be located and if it contains any information respecting assets or security holdings, to produce the same

Tr 289

By Mr. Mann:

We will search for it.

By Mr. Albrecht:

Mr. Mann has also handed me today photostats of the notarial protocol dated May 4, 1949 and signed by Mr. Unger which I ask to have introduced and marked as Wagenknecht Exhibit Number 26 for identification.

Mr. Mann has also handed me photostats of the notarial protocol dated July 2, 1954, and signed by Mr. Unger which I ask to have marked as Wagenknecht Exhibit Number 27 for identification.

By Mr. Mann:

Mr. Albrecht, some time ago you requested a copy of the claim filed by the petitioner under date of August 6, 1948 together with certain related documents. I have been able to find an extra copy of that claim and those documents which I hand you herewith. I will not identify the related documents as you may do so in your request for marking.

By Mr. Albrecht:

Thank you, Mr. Mann. These documents will help to complete the record of the claim heretofor filed by Mrs. Stinnes with the Office of Alien Property in Washington and I shall ask to have marked as Wagenknecht Exhibit Number 28 for identification the claim consisting of five pages signed by Mrs. Stinnes on August 6, 1948, bearing the received stamp of the Office of Alien Property under date of August 9, 1948. I shall ask to have marked as Wagenknecht Exhibit Number 29 for identification the photostat of a letter dated June 15, 1948 addressed to the Alien Property Custodian by Mrs. Stinnes bearing the received stamp of the Office of Alien Property as of June 21, 1948. I shall also ask to have marked as Wagenknecht Exhibit Number 30 for identification, a copy of a letter dated May 31, 1948, signed by Hugo Stinnes and addressed to the Central Bank (Landeszentralbank) of North Rhine-Westphalia. I shall ask to have marked as Wagenknecht Exhibit Number 31 for identification a supplement to her claim dated August 7, 1948 and signed by Mrs. Stinnes. I shall also like to have marked as Wagenknecht Exhibit Number 32 for identification a letter dated August 1, 1952 signed Otto Stinnes and addressed to

the Office of Alien Property bearing the received stamp of the latter as of September 9, 1952.

By Mr. Mann:

Tr 290 I now hand to the Consul a copy of a certificate given by Professor Dr. H. H. Berg under date of October 1, 1955 and ask that it be marked for identification and appended to the record as Petitioner's Exhibit number 15.

By stipulation Counsel want the record to show their understanding that petitioner is presently unable to appear for further examination in Duesseldorf and is confined to the University Hospital in Hamburg. It is further understood that the United States District Court for the District of Columbia has ordered that the deposition be continued in the petitioner's room in the hospital at Hamburg so long as Professor Berg will permit. Accordingly, Counsel have stipulated that this portion of the record should now be certified and a new portion of the record will be started when the petitioner is examined in Hamburg.

Closed on October 5, 1955 at 5:15 P.M.

Signature of Petitioner, Mrs. Claere Hugo Stinnes waived, as agreed to by parties. (See Hamburg Deposition).

/s/ Charles A. Kiselyak
Charles A. Kiselyak
Vice Consul of the United States of America
at Duesseldorf, Germany

/s/ Robert L. Dwelley
Robert L. Dwelley
Vice Consul of the United States of America
at Duesseldorf, Germany

/s/ Ilse Pongs
Ilse Pongs
Interpreter

/s/ Doris Wismer
Doris Wismer
Secretary

ENCLOSURE TO DEPOSITION OF MRS. CLAERE HUGO STINNES

Sealed envelope containing a copy of the Last Will of Mrs. Claere Hugo Stinnes, as mentioned on page 210 of the record.

* * * * * *

ENCLOSURES TO DEPOSITION

Petitioner's Exhibits

1. Photostatic Copy of Last Will of Mr. Hugo Stinnes and Claere Hugo Stinnes nee Wagenknecht.

1a. Translation of above.

2. Photostatic Copy of Printed Matter issued by American Bankers at the time of granting the loan to the Stinnes firm.

3. Ditto

4. Photostatic Copy of agreement dated October 24, 1930 between Claere Hugo Stinnes and Atlantic Assets Corporation.

5. Photostatic Copy of letter dated May 1, 1927 written by Hugo Stinnes, and

5a. translation thereof.

6. Photostatic Copy of Option Treaty dated November 28, 1927 and signed by Claere Hugo Stinnes, and

6a. translation thereof.

7. Photostatic Copy of letter dated November 25, 1952 signed by Hans-Carl von Linsingen, and

7a. translation thereof.

8. Photostatic Copy of letter dated August 12, 1926 by Claere Hugo Stinnes, addressed to Hugo Stinnes, and

8a. translation thereof.

9. Photostatic Copy of letter dated January 3, 1933 by Edmund Wagenknecht to Claere Hugo Stinnes, and

9a. translation thereof.

10. Photostatic Copy of letter by Claere Hugo Stinnes to her daughter Claerenore married Soederstroem, and

10a. translation thereof.

11. Photostatic Copy of letter dated September 6, 1933 by Claere Hugo Stinnes, addressed to her daughter Claerenore married Soederstroem, and

11a. translation thereof.

12. Photostatic Copy of Notice of Claim for Return of Property executed by Claere Hugo Stinnes-Wagenknecht on February 3, 1955.

13. Copy of letter dated July 18, 1950 by Claere Hugo Stinnes Wagenknecht addressed to Hugo Stinnes, and

13a. translation thereof; and

13b. Photostatic Copy of letter (entitled copy) dated July 18, 1950 by Claere Hugo Stinnes, addressed to Hugo Stinnes, and

13c. translation thereof; and

13d. Photostatic Copy of letter (entitled copy) dated July 10, 1950 by Hugo Stinnes addressed to Otto Stinnes; and

13e. Photostatic Copy of letter entitled "copy of letter O.ST. vom 26.6.1950 an H.St.; and

13f. Photostatic Copy of letter dated July 13, 1950 by Claere Hugo Stinnes addressed to Hugo Stinnes.

14. Photostatic Copy of Medical Certificate dated September 26, 1955 by Professor H. Boettner, Muelheim (Ruhr).

15. Photostatic Copy of Certificate dated October 1, 1955 by Professor Dr. Berg, University Hospital Eppendorf, Hamburg.

* * * * * *

ENCLOSURES TO DEPOSITION

Wagenknecht Exhibits

1. Photograph of alleged letter to Don Edmundo Wagenknecht dated April 14, 1922 in the handwriting of Hugo Stinnes Sr

2. Photostatic Copy of letter dated January 10, 1929 by Claere Hugo Stinnes to Edmund Wagenknecht

3. Photostatic Copy of Agreement dated April 5, 1929 between Mrs. Hugo Stinnes-Wagenknecht and Mr. Edmund Wagenknecht, and

3a. photostatic copy of translation thereof.

4a. Photostatic Copy of letter dated March 17, 1953 from Dienststelle fuer Auslandsvermoegen addressed to Claere Hugo Stinnes; and

4b. Photostatic Copy of copy of letter dated June 25, 1953 addressed to Dienststelle fuer Auslandsvermoegen and signed Hugo Stinnes; and

4c. Photostatic Copy of letter dated June 29, 1953 addressed to Firma Hugo Stinnes by the Dienststelle fuer Auslandsvermoegen; and

4d. Photostatic Copy of copy of letter dated July 6, 1953, addressed to Flyktkapitalbyran Stockholm, and signed Hugo Stinnes.

5. Photostatic Copy of Notarial Protocol before Notary Dr. Beer dated December 18, 1929.

6. Photostatic Copy of Notarial Protocol dated March 3, 1927 taken before Notary Leveloh.

7. Photostatic Copy of Definitive Property Tax Report for 1928 of Claere Hugo Stinnes.

8. Photostatic Copy of Property Tax Declaration for 1935 of Claere Hugo Stinnes.

9. Photostatic Copy of Property Tax Declaration for 1940 of Claere Hugo Stinnes.

10. Photostatic Copy of letter dated January 20, 1929 addressed to Edmund Wagenknecht by Claere Hugo Stinnes, and

10a. photostatic copy of translation thereof.

11. Photostatic Copy of "Otto Stinnes Exhibit 1", Definitive Tax Return for 1940.

12. Photostatic Copy of "Hugo Stinnes Exhibit G" Property Tax Return for 1935 of Claere Hugo Stinnes.

13. Photostatic Copy of Property Tax Declaration as of January 1, 1949 of Claere Hugo Stinnes.

14. Photostatic Copy of Property Tax Declaration for 1953 of Claere Hugo Stinnes.

15. Photostatic Copy of Income Tax Declaration for 1953 of Claere Hugo Stinnes.

16. Photostatic Copy of Power of Attorney to Otto Stinnes dated

February 7, 1952.

17. Certified Extract of the Commercial Register of the Lower Court Muelheim-Ruhr relating to the partnership Hugo Stinnes o. H.

18. Photostatic Copy of Copy of Last Will of Edmund Wagenknecht and Clementine Wagenknecht nee von Eicken, dated April 20, 1921.

19. Statement dated September 16, 1955 signed by Mr. Unger on behalf of the firm Hugo Stinnes and annexed statement of the firm's assets and further statement of participations.

20. Photostatic Copy of Copy of Partnership Agreement dated May 18, 1931.

21. Photostatic Copy of Definitive Property Tax Return for 1925 and 1926 of Claere Hugo Stinnes.

22. Photostatic Copy of Military Government Form MGAX (1) filed by Mrs. Stinnes under Military Government Law Number 53, together with four annexes.

23. Photostatic Copy of Military Government Form MGAX (2) filed by Mrs. Stinnes in accordance with Military Government Law Number 53.

24. Photostatic Copy of Preliminary Property Tax Return for 1946 by Mrs. Claere Hugo Stinnes.

25. Photostatic Copy of Property Declaration 1946 by Claere Hugo Stinnes.

26. Photostatic Copy of Notarial Protocol dated May 4, 1949, signed by Mr. Unger.

27. Photostatic Copy of Notarial Protocol dated July 2, 1954, signed by Mr. Unger.

28. Photostatic Copy of Notice of Claim for Return of Property signed by Clara Wagenknecht de Stinnes on August 6, 1948.

29. Photostatic Copy of letter dated June 15, 1948 addressed to the Alien Property Custodian by Claere Wagenknecht de Stinnes.

30. Photostatic copy of letter dated May 31, 1948 signed by Hugo Stinnes and addressed to the Landeszentralbank Muelheim-Ruhr.

31. Photostatic Copy of Supplement dated August 7, 1948, signed by Clara Wagenknecht de Stinnes.

32. Photostatic Copy of letter dated August 1, 1952 signed by Otto Stinnes and addressed to the Office of Alien Property.

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Federal Republic of Germany)
State and City of)
Freie Und Hansestadt Hamburg) SS
Consulate General of the United States of America)

Deposition of Clare Hugo STINNES of Muelheim/Ruhr, Federal Republic of Germany, taken before me, Richard B. Andrews, Vice Consul of the United States of America at Hamburg, Germany, under and by virtue of an order of the United States District Court for the District of Columbia dated October 6, 1955, entered on a petition of the said Clare Hugo STINNES to perpetuate her testimony filed in the United States District Court for the District of Columbia. It appearing that the witness, Clare Hugo STINNES, could not intelligently testify in the English language and did well understand the German language, one, Dr. R. F. Diedrich Dieckhoff, who also well understands the English and the German languages, was employed as an interpreter and was sworn in as follows:

> You do solemnly swear that you know the English and German languages and that you will truly and impartially interpret the oath to be administered and interrogatories to be asked Clare Hugo Stinnes, a witness, now to be examined out of the English into the German language, and that you will truly and impartially interpret the answers of the said Clare Hugo Stinnes thereto out of the German language into the English language. So help you God.

and said Dr. R. F. Diedrich Dieckhoff interpreted accordingly.

The said interrogations and the answers of the witness thereto were taken down stenographically by one, Sophie Kuver and were then forthwith transcribed by her, and the reading of the said transcript and the signing thereof was waived by all parties to this proceeding through their respective counsel.

Clare Hugo Stinnes, of Müelheim Ruhr, Federal Republic of Germany, being of lawful age, was duly sworn and thereafter testified as appears from the attached.

* * * * * *

By Mr. Mann: Hamburg, October 11th 1955

Tr 1 This is a continuation of the deposition that was started in the American Consulate General in Dusseldorf, Germany, on August 30th 1955. This portion of the deposition is continued in the University Hospital Eppendorf, Hamburg, pursuant to an order of Court entered by the Honorable Luther W. Youngdahl United States District Judge of the United States District Court for the District of Columbia. That order is attached to this record.

The appearances are as follows:

For the petitioner: James H Mann, Washington, D. C.;

For Herbert Brownell, Jr., Attorney General of the United States and Atlantic Assets Corporation:

Robert J. Wieferich, Washington, D. C.;

For Mrs. Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht Handelsmaatschapij: Ralph G. Albrecht, New York, N. Y.

By Mr. Albrecht:

Let the record show that Prof. Dr. H. H. Berg, Director of the First Medical Clinic of the University Hospital Eppendorf, Hamburg, is also present.

I would like the record to show that it is now 11 o'clock a. m. and I think that for our purpose it will also be desirable that the exact time of the completion of this morning's examination be recorded in the transcript.

By Mr. Mann:

Let the record show that Mr. von Papen is assisting me as heretofore, and that Miss Korner is taking an unofficial German record for the petitioner.

This part of the deposition is taken before Richard B. Andrews,

Vice Consul, Consulate General of U.S.A. Hamburg. The qualifications of the interpreter Dr. Albrecht R. F. Diedrich Dieckhoff, Agnesstr. 24, Hamburg, were stipulated to by the attorneys for all the parties. Whereupon the interpreter was duly sworn, the reporter was duly sworn and the petitioner after being duly sworn, answered as follows:

By Mrs. Stinnes:

Tr 2 At the end of our last session at Dusseldorf you asked me to give certain proofs regarding my camouflaged property. As I did already say before I took over a considerable part of this property from my late husband being his heir. In a case like that when acting in this manner, it is without saying that one tries to avoid any documentation in writing; as you yourself being a lawyer should know, there is a considerable danger connected with these matters, and there may happen certain casual events nobody could have foreseen, and which could not possibly have been avoided by him. All written evidence I have been able to find up to now you did already take to your files, as I did already produce them. If besides there should exist more direct or indirect evidents in writing, either in original or copies, such documents could only be filed with my son Hugo, the reason being that Hugo did all my correspondence regarding these business matters until I withdrew my power of attorney in 1950. I am convinced that these documents will be available to you. To myself they are no more accessable since 1950. It did not for a single moment enter my mind to demand the return of my correspondence, i.e. the part of the business correspondence which was done by means of his private office. As he was my attorney-in-fact, I may add that this correspondence was my own property and not his, and I really never thought of that my own son should ever employ written documents against me, his own mother, documents that belonged myself. Otherwise I should have been in possession of documents like that. Several times already I have been repeating that I don't possess any document whatsoever. Moreover there is other evidence available viz. witnesses. You, Mr. Albrecht, mentioned Herr Leveloh several times, one of my former attorneys. And you are at liberty to approach Herrn Leveloh and

ask him for his evidence.

Further you mentioned Herrn Amtsrichter Thomas who for many years was attorney-in-fact of my late husband and also of my late brother Don Edmundo. In the meantime I had a chance of talking to Judge Thomas whom I asked how he appraised the financial status of my late brother with whom he had been in connection for a long time like that. He answered approximately as follows:

Tr 3 "I highly appreciate your late brother for being an honorable and decent man otherwise I should never have acted as his attorney-in-fact regarding matters where I possibly could have served him. I never considered him a wealthy man, on the contrary - and there he raised his voice in a way of indignation - I didn't know him otherwise than for having needed help from his father, your late husband or later from you yourself." So far the statement of Amtsrichter Thomas, which I would have liked to place before you as early as several weeks ago but, by bad chance I hadn't been in the position to do so. So I am confident that other witnesses will be found as well, witnesses that could confirm the truth of my own statements. It is a pathetic event that I lost my most reliable trustees, Herrn Albert Jensen and my own brother Don Edmundo who died in the meantime. May-be my brother Don Edmundo was no successful business man, but he was - and that he had inherited from his parents - the most honorable and fair person one could possibly imagine. He would never, unlike my sister-in-law had been induced to doubtful transactions if he were still alive. Besides, as I did mention already, I asked my attorneys to make investigations abroad in order to collect evidence that my depositions are true, and they will not spare any trouble to succeed if possible. That is all.

Q. You see, Mrs. Stinnes, what troubles me is that your statements are not consistent with each other. You say first that you have no documentary proof because in 1943 by air-raid everything was destroyed. Do you want us now to believe that Hugo has all documentary evidence you need to support your statements that you own certain alleged foreign camouflaged properties. A I cannot withdraw anything I deposed up to

now. I definitely lost a whole steel safe containing the most important documents including the letters of my late husband by his own handwriting; and this steel safe was at the office of the firm. This I did already mention. What my son Junior retained - I know for certain that
Tr 4 one steel safe was saved - I don't know, and I never heard anything about that. In my private household I lost everything. From the first to the last including the correspondence between my late husband and me myself from the first day of our engagement, everything. What I have been mentioning now that is to say what came to you through my son Hugo, was the matter you yourself have been placing before me among the documents you showed me time and again. And there was one tiny little document without any importance which gave me the proof of my apprehension that you got all these documents through my son Hugo or those who are helping him and this included the silly little letter by my nephew Walter Wagenknecht who put some demands to me, and this letter had my written remark expressly running as follows: "To be passed on for further action". Besides I had written on it by my own hand: "I ask for a copy of the answer to this letter" I was entitled to that answer, as this letter had been written to me, and I called upon the private office of my son Hugo . . . the initials of Fraulein Emmerich, original a private secretary of my late husband and then passed on through the legal department to my son Hugo, and this, as I remember, is also jotted down on the letter. That means private office of my son Hugo. Then I added the following final remark. I asked for a copy of the answer to this letter, but this answer I did never receive. This ridiculous little document - there I thought how can it get into the hands of Mr. Albrecht, the only possibility being through the private office of my son. That will mean that there is no inconsistency between my former statements and my later ones.

Q. You see, Mrs. Stinnes, I have difficulty accepting your statements. That silly little letter from Walter Wagenknecht related to the estate of Consul Wagenknecht, and therefore, was properly a part of the file relating to Consul Wagenknecht's estate, and when Walter wrote that

letter to you you were no longer an executor of Consul Wagenknecht's estate, were you? A. This letter was addressed to me, and I passed it on to my son Hugo through the private office asking for having it

Tr 5 answered as it was written on it. I didn't hear anything about it anymore, and it is left to my son Hugo to which file it should be brought. As to myself it is finished. The letter had been written, and I didn't get an answer. So my statement stands airight, and I have nothing to add to it.

Q. But the fact remains that throughout your deposition you have not been able to produce a single scrap of written evidence that will support your statement of alleged ownership of camouflaged foreign property, is that not so? A No other evidence as I had already been telling you, Mr. Albrecht.

Q. Let me go over now once more to your trusted trustee Albert Jensen. He died 1941. Where is the property that he is supposed to have held in trust for you? Will you tell us that? A You appear to hint at the 4500 Atlantic Asset Shares which he had been holding in trust for me. These were no personal assets of Albert Jensen's estate, and when the estate of Albert Jensen was wound up between the heirs of Albert Jensen, his wife and his children, kept apart directly This is true and can be proved. Where they went later these 4500 Atlantic Asset Shares, my incontestable property 100%, you may ask my son Junior.

Q. But where is the other property that Albert Jensen held in trust for you? A There I must ask you which property you do hint at, you should explain yourself more precisely.

Q. Well, you have testified that he acted first as trustee for your husband, and then he did as trustee for you Now I ask you what property he held in trust for you besides the 4500 Atlantic Asset Shares? A. The

Tr 6 4500 Atlantic Assets Shares had nothing to do with my late husband because that was not before 1924. Another part of the property I know of which so far as I know, was owned by my late husband 50:50 or by me myself respectively being his heiress - the participation may have been greater, I do not know for certain - was a small company at Copenhagen,

I do not even know its name, it was a small company, a shipping agency, that so far I know possessed a ship of her own. What happened to this company after the death of Albert Jensen, I do not know. All I can say is: ask my son Hugo. Besides - that appears to have been in 1930, 1933, I do not know for certain - 4 1/2 Million so far I know, may-be 4 million only, as it is so long ago; they had been given to Albert Jensen in trust, and he was holding it in trust for me. Here again, I do not know what happened to them. I want to add that they came from the sale of my interest in the Elverath Company which at that time had been sold to Wintershall's Mining Company. The remainder of these moneys i.e., the other half had been and must still be with Edwagmij.

Q. But you see Hugo is not the witness here, you are, and I, therefore, ask you what has been done since 1950 by you in Denmark to get back the property which you claim as your own? A. First of all I could not probably do anything about it in Denmark, as all this happened before 1950 when my son Hugo was still my attorney-in-fact. At that time, as I have been saying several times already, he in the first line, enjoyed my confidence, secondly I was not supposed to bother about all foreign property, and I was not supposed to know about it. I never molested my sons with unnecessary questions, so I did not ask Junior where did you leave the 4500 Atlantic Asset Shares and where is the other property left. I did trust him, and, therefore, I told you: do ask Hugo about it. I myself don't know, but to finish my phrase-- as late as 1950 I could look to my own affairs, my attorneys from that time on, are instructed to look to all these affairs of me to investigate and to find out where my property is left and how to prove this property, this incontestable property of mine, and I trust to that.

Tr 7. Q. Well, in the five years that you have dispensed with Hugo what have you and your son Otto and your attorneys located by way of proof to support your statement that you own certain camouflaged property? Please tell us that. A. It cannot be contested that the legal work I gave my attorneys in America is a pretty hard one just because of the camouflage. Accordingly they could not yet give me definite results,

I should say definitely supported ones. These proofs will be later submitted to the Court at Washington whose decision will be definite in the long run. But at this occasion I want to utter a few thoughts which appertaining to the matter in question, although they will not import a direct answer to your question.

In my claim I stated what I considered my property in the estate of my late husband and later in succession of my husband, i.e. on the one hand property acquired in succession from my late husband, and on the other hand property acquired subsequently of this claim - perhaps apart from my love of the truth it afforded a great deal of courage - I gave copies to the German taxation authorities and the German treasuree. Do you mean I should be so foolish as to take upon myself a guilt that would not fall upon myself if I were not thoroughly convinced, on the ground of all that happened in the past, that I made statements as to my property on the one hand to the Property Custodian, on the other hand to the German authorities - if that would not be my own property? That would be preposterous indeed, that would be idiotic on my part. Then I should be declared ready for the lunatic asylum.

Q. I asked you what proof you are able to gather for the last 5 years. Your American attorneys have not been acting for you for 5 years, so I must take it from your answer that as a result of your efforts and of Otto's efforts and subsequently of the result of your American attorneys' efforts you have not any proof today except your own statements that will support your claim that you own certain camouflaged foreign property. Is that not so? A. Firstly it should run they w e r e camouflaged, as they are not camouflaged anymore. Besides, Mr. Albrecht, I can only refer you to my last answer which I deem exhaustive, also as regards your second question.

Tr. 8

By Mr. Mann:

What time do you have?

By Mr. Albrecht:

It is one o'clock. Let the record show that the session has lasted

from 11 to 1 without any recess, and we are stopping now upon the recommendation of Dr. Berg.

- - - -

This session ended on October 11th 1955 at 1 o'clock p.m., and the cross-examination was resumed by Mr. Albrecht on October 12th 1955 - 10.40 a.m.

- - - -

Q. Mrs. Stinnes, after your fight with Hugo in 1950, and when you decided to relieve your conscience did you instruct Mr. Unger, your Director for Finance to file only correct tax-returns on your behalf to include the foreign property which you claim were camouflaged? A. No.

Q. Did you give such instructions to your legal adviser or director of your legal department? A. No.

Q. Did you instruct your attorney-in-fact your son Otto to give such instructions to the director of the legal department or to your director for finance? A. No.

Tr. 9 Q. Have you at any time since 1950 communicated with Dr. Brunner to let him know that you claim ownership of Fundus and Mira? A. No.

Q. Did you ask your attorney-in-fact your son Otto to advise Dr. Brunner that you claimed ownership for Fundes and Mira? A. No.

Q. Since 1950 did you communicate with Edwagmij in Amsterdam to let them know that you claim ownership of the Company? A. No. I think I did already make a deposition to the fact that I did not succeed to contact Herrn v. Linsingen, and that this gentleman consciously avoided any possibility of possible meeting.

Q. I think you are confusing things. You testified that Mr. v. Linsingen left Edwagmij's employ in 1939. My question to you now is: Since 1950 have you made any effort to communicate with Edwagmij and let them know that you claim ownership of the Company? A. I did not attempt a direct contact, but a contact through Herrn v. Linsingen I deemed to be an indirect one, as I am convinced that he has always been and still is in contact with Edwagmij.

Q. Is Edwagmij in existance today? A. As it is my 100% property,

and as I did not dissolve it nor did sell it, nor gave it away, I think it is sure to exist still

Q. Then I take it that your answer is that you never communicated with anyone in Edwagmij in Amsterdam since 1950, is that true?

Tr. 10 A. You are right in supposing that I personally did not contact anybody. I did leave it to my attorneys to do these contacts, as I had entrusted them with the examining these matters from 1950

Q. Which attorneys did you ask in 1950 to communicate with Edwagmij? A. For the moment I cannot recollect the names of these attorneys. From 1952 the Pehle firm, Mr. Mann and the other attorneys took over the investigations.

Q. And did these attorneys report to you that they had communicated with Edwagmij? A. I did already several times testified that this work is a pretty difficult one for these gentlemen, and that up to now they did not give me a report.

Q. Then your answer is that for the last 5 years you have received no word with respect to any contact made with Edwagmij on your behalf; is that true? A. No - I said I do not know

Q. Can you tell us what you believe the worth of Edwagmij to be today? A. No - I did not look to market quotations as to that

Q. Do you mean to say that the Edwagmij stock is listed on the stock exchange? A. That I cannot know, as it was a company dealing with finance transactions as well

Q. Do you have any idea of the worth of Fundus A G? A. No - for the moment I am not in the position to know about it.

Tr 11 Q. But, Mrs Stinnes, surely in the last 5 years when you finally got rid of Hugo you must have gained some knowledge of the value of the foreign assets which you claim to own. A. You are wrong in one fundamental point. Firstly the expression "got rid of Junior" is not suitable. It was with great regret that I felt his decision to decline the duties of a partnership, although that went without saying. And for two further years, I was rather confident that he would realize his great faults and his wrong and return to me. So - during these two years I made no considerable

endeavours, to get behind the secrets if I may say so of all camouflaged property, as these secrets had been withheld from me by him alone. Only after I had learned from his actions that his doings were in contradiction with his duties as a partner in a partnership, but that .... I should rather like to avoid stronger expressions .... As my son Otto and then I myself, first by words of mouth and then in writing had prohibited that he should not take out anymore borrowings from the partnership - I thought he was sinning like that. Then I realized that this war he had declared on me would last on and that I had been disappointed in all my hopes. It was as late as that when we began trying more seriously to find out everything which up to then had been concealed from us.

Q. If I understand you correctly, Mrs. Stinnes, then you say that if you could have made your peace with Hugo as recently as two years ago you would never have gone to the German Tax Authorities to let them know of the fraudulent tax declarations that you had filed for 30 years. Is that a fair statement? A. I am sorry that you apparently misunderstood me. I did not say a single word about what might have happened then.

Q. If you claim the entire ownership of Edwagmij against whom do you claim it? A. I leave it entirely to my attorneys from whom they might claim these property rights.

Tr 12 Q. Then you really don't know who the legal owners of Edwagmij are today, do you? A. If somebody would be found who should claim the legal ownership of Edwagmij which belongs to me myself as my 100% property although I do not know about the actual management of it I should have to call that person an imposter.

Q. But whether such person or you Mrs. Stinnes would be the imposter would depend on who brought forward proof of ownership, is that not so? A. This would depend from the question whether this evidence you are mentioning will hold good in law, and that would have to be investigated about by my attorneys.

Q. Well, that is what I say, it would be the evidence, the legal evidence that would determine who the imposter is, is that not true? A. If an imposter regarding the Edwagmij property could be found out,

I am convinced that I myself would never be the imposter, for it is quite logical that a thing even if it has been stolen from me will remain my property, and it will be only up to me myself to find out the thieves and to bring them to law, the same would apply to the Edwagmij case Edwagmij is my property - on the ground of my inheritance; even if it should have got another name today and even it should have been shifted over to - God knows whom. My attorneys will find out all about it. My property it will remain by all means.

Q. Mrs. Stinnes, I would be only too glad to believe you that you are the 100% owner of Edwagmij if you would submit proof to us of that fact, but throughout this deposition you have not produced any evidence to support that statement, isn't that so? A. As to the last few years I could not produce any evidence, but I could produce evidence regarding the previous period. As regards the last few years my attorneys will look to it.

Tr 13 Q. But even for the previous years you haven't produced any evidence to prove your ownership in Edwagmij, is that not ture? A No — I should think this is written down in the minutes, I believe rather at the beginning, namely that I had several talks with Herrn von Linsingen about my Edwagmij affairs, will that not do for your proof? And the business transactions I did over Edwagmij per instance, when the securities were bought from my father by my late husband that is to say before the year 1924? The later transactions about which we had so many questions and answers in the year 1929 did also particularly refer to the same business transactions which I wound up by means of Edwagmij in order to let my brothers and sister have what I thought to be just and right according to my ideas of fairness. Will all that not do for a proof? Could I possibly have done that through a strange Company? Could I have given it directions like that?

By Mr. Mann:

Mrs. Stinnes we have now been at this for more than one hour. Would you prefer that we continue or would you want a short recess?

By Mrs. Stinnes:

My watch stopped. Yes, for 15 minutes.

Q. Mrs. Stinnes, do you claim ownership for any other property in Holland that may be camouflaged? A. Among others I should like to claim property rights in diverse affiliated companies of Edwagmij?

Q. What are those companies? A. I understood I must try to recollect the names. I cannot recollect them for the moment.

Tr 14 Well, do you mean to say that the only other property you claim in Holland are the subsidiary companies of Edwagmij or are there also others? A. The ones and the others--I cannot recollect the names for the time being.

Q. Well, what I am asking you is what property do you claim in Holland outside of any company that may have been affiliated with Edwagmij? A. I did already say, I cannot recollect the names. Perhaps I could recollect them tomorrow.

Q. Did you say you cannot recollect the name or names of any property interest in Holland? A. Yes, in Holland and elsewhere - thus I gather the question was worded. The question was not restricted to Holland, but also to elsewhere out of Holland, at least thus I gathered from your question.

Q. I am afraid you did not understand my question. You claimed ownership of Edwagmij and its affiliated companies, and I am merely asking you what other property interest you are claiming in Holland that were camouflaged. A. I did already say that for the time being I cannot recollect the names -- perhaps tomorrow, but what regards Edwagmij I just, during the recess, remembered that up to two years ago, Edwagmij was blocked on the ground of having been my own property. What could have possibly changed during these last two years, blocked by the Dutch, as my own property? That is a fact, isn't it?

Q. Who told you the extraordinary story that Edwagmij was blocked by the Dutch as your own property? A. Firstly I did not learn anything else that it got blocked as my own property. Secondly a dear old

friend of mine whom I knew for 30 or 40 years had given away his feel-
Tr 15 ings about the following points . Firstly regarding the time during the property was being blocked - as moneys he had put in Edwagmij as being a German shareholder (gesellschafter) were blocked as well, and that accordingly he couldn't get hold of his property. And, after 1953 he was ever so glad that, now, he got back his money altogether with interests and interest on interests by Edwagmij.

Q. What if anything did you do to obtain the release of Edwagmij from the Blocking Degree of the Dutch Government? A. Nothing -- it would have been hopeless, as we had to wait and see.

Q. Well then, I take it it is your story that the people who obtained the release of Edwagmij told a falsehood to the Dutch Government as to who the true owners were A I cannot say anything as to that, as I don't know about it.

Q. How else could the release of the company have been obtained except by saying that no German was the owner of the company? A. That is up to the Netherlands Government why they proceded like that.

Q In any event I assume from your testimony that you have never brought suit against Edwagmij in Holland and that no one by your direction has brought suit against Edwagmij in Holland, is that so? A. I cannot say anything about it, as I don't know.

Q But Edwagmij has brought suit against you, hasn't it? A. Not that I know of.

Q. Do you mean to say that you have not been informed that Edwagmij has brought suit against you in Germany? A I wanted to say
Tr 16 what I have said - I do not know that the Dutch Government did bring in action a suit against me regarding Edwagmij.

Q. I am afraid you have again not understood me Mrs. Stinnes. I am asking you whether you know that Edwagmij has brought a law suit against you in Germany do you know that? A I haven't the least idea about it.

Q. Hasn't your attorney-in-fact your son Otto advised you that Edwagmij has brought a suit against you in Germany? A. I didn't hear

anything about it, not even from my son Otto.

Q. But you have complained, Mrs. Stinnes, that your son Hugo never told you anything. Do you mean to say that your son Otto doesn't keep you advised as to things that concern you personally? A. By no means, my son Otto will always keep me abreast about events as far as necessary, but it may be possible that in view of my bad state of health he would here and there avoid to advise me about facts which he would assume or rightly suppose that they would give me unnecessary excitement, as the Doctor strictly told me to avoid any excitement whatever.

Q. After the American loan in 1926 was obtained, isn't it a fact that the only thing you had left in the way of property holdings was your house in the Schloss-Strasse in Muhlheim and a very small income, is that true? A. Mr. Albrecht: I think that the question you put to me is already dealt with in the minutes, namely that I, after all, had so much private income and private property as to keep up my standard of life as I was wont to for years already. At the time this statement would have satisfied me. At that time I was the sole and only owner of the later partnership of Hugo Stinnes O. H., and this partnership too had a safe and regular income. Besides I had other income as well. I was, as it is already laid
Tr 17 down in the minutes not bound to give the Americans more than they wanted as a matter of security for their loan.

Q. But at that time that you gave Hugo the option on 50,000 shares of the Hugo Stinnes Corporation you wrote him, did you not, that you could not show your gratitude to him by the payment of cash because you had very little of it. Is that not so? A. At the time I testified that my son Hugo suggested to give a share in the Corporation to those who had helped me when getting the loan. This alone brought me to treat my son Hugo in the same way, that is to say not to let him have any cash which might have dwindled down to nothing one day, but to let him have some substantial which still has kept its value up today. That is to say with an option of 50,000 shares in the Corporation. Nothing else influenced me by then.

Q. I don't think that that is quite right, Mrs. Stinnes. At the time

that you wrote this letter to Hugo (Petitioner's Exhibit No. 6) did you not accompany it by a long hand-written letter in which you told Hugo that you lack the means to show your appreciation, and therefore offered nim by option which was actually worthless on the stock of Stinnes Corporation?

By Mr. Mann:

Mr. Albrecht handed the witness petitioner's Exhibit No. 6.

A. Where is that hand-written letter? In this letter after all there is nothing written about that I shouldn't have had the means to show my son Hugo my appreciation by money's worth. I have nothing to add to what I said before, and that is not in contradiction to this letter, as they were informations of pure busmess character.

Q. But you do not answer my question. I have suggested that with this letter you wrote a hand-written note in which you told Hugo you had given him an option which is worthless. A. I do not know anything about

Tr 18 a letter like that.

By Mr. Mann:

We have now examined the witness for something over two hours making allowance for the 12 minutes recess. As Dr. Berg has indicated that our sessions should not endure for a longer time, I suggest that we adjourn today's session and that counsel leaves petitioner's room and meet elsewhere in order that we may discuss the allocation of the remaining time.

By Mr. Albrecht:

Mr. Mann, according to my watch it is now 12.55 p.m., and if I recollect correctly we started the hearing today at 10.45 a.m. and we had a recess of 12 minutes around noon.

By Mr. Mann:

In order that the record may be clear as to time: We started at 10.45 a.m. by my watch. We recessed at 11.46 a.m. and we re-convened at 11.58 a.m., and when I made my statement that the time had expired my watch showed 12.56 p.m.

By Mr. Mann:

Let the record show that prior to yesterday's session counsel met with Professor Dr. Berg during which meeting Professor Dr. Berg explained to us the condition of the petitioner. At the suggestion of Mr. Albrecht Dr. Berg did not at that time give us an estimate concerning how long the questioning of the petitioner might endure. He attended a part of yesterday's session and reserved judgment on the continuation of the deposition until this morning when counsel again met with Dr. Berg prior to today's hearing. At that time he advised us that in his opinion the questioning could only endure at most for five additional sessions. Dr. Berg has stated that he would give a written certificate to that effect which, of course, will be appended to the record. In view of Sec. 4 of Judge Youngdahl's order entered on October 6th counsel are directed under such circumstances to attempt to reach an agreement effecting an equitable allocation among them of the time specified by Dr. Berg. Accordingly I suggest to you Mr. Albrecht and Mr. Wieferich that Mr. Albrecht who has now had two sessions since we started in Hamburg take two additional sessions, that the session following be divided between Mr. Wieferich and me for our re-direct and re-cross, and that Mr. Albrecht be given the last session for re-cross. Is that suggestion agreeable to you, gentlemen?

By Mr. Wieferich:

Tr 19 As you gentlemen know when this matter was referred to Judge Youngdahl last week my own recommendation was that I would require a session of 2 hours for re-cross examination. I believe, however, in view of the circumstances here that the suggestion of counsel is satisfactory, and I will complete my re-cross examination in 1/2 of the full session if necessary.

By Mr. Albrecht:

I wish that I could agree that the matter could be disposed of so simply, as the allocation of time suggested by you, Mr. Mann. In my view a responsible attorney must decide what the interests of clients require for their protection. I have already stated that as upon her direct examination the witness has told a wholly unsupported story of alleged

ownership of camouflaged foreign properties, the burden has fallen largely upon me to conduct what has proven to be a difficult cross-examination with the view of discrediting the witness and showing by her answers that her story was not logical or worthy of belief. The witness despite her age and physical condition has shown herself to be a strong witness, and that fact necessarily has made it incumbent upon me to conduct an extended cross-examination. This cross-examination by me has not been concluded and will not be concluded within another 2 or 3 sessions. I still have to cross-examine the witness on the basis of some of the exhibits that have been introduced on her behalf, and I also have to cross-examine her on the basis of such documentation whose production I have demanded and which has been produced. Furthermore there still remains considerable documentation to be produced which I have demanded and unless such documentation is produced and I have the opportunity to question the witness on the basis of the same I shall be unable to discharge my duty towards the prospective adverse parties whom I represent. I feel, therefore, that it is quite apparent that I shall be unable to come to an agreement which would restrict my cross-examination to two more sessions. If it is your intention, Mr Mann, and yours, Mr Wieferich, to restrict me to two more sessions then quite obviously I shall have to reserve all my rights to object to any effort that may be made in the future to use or offer any part of this deposition, unless, of course, we can agree upon some subsequent occasion to continue this deposition so that it may be completed.

Tr 20 The fact that I shall be deprived at this time of my full rights to cross-examine the witness will, of course, support such further action as I may be required to take before this court or the court of Appeals for the purpose of assuring my clients that their counsel will have full and complete opportunity to cross-question this witness.

By Mr Mann:

I take it, Mr Albrecht, that unless there is an agreement to allocation of time, there will be none. Accordingly I do not intend to restrict you in any way but, of course, reserve my rights on your refusal to agree to an allocation suggested in the court order.

For completeness let the record show that prior to our convening in Hamburg for the purpose of continuing the deposition I had advised both Mr. Albrecht and Mr. Wieferich that Dr. Berg had advised me by telephone that there could only be a maximum of six sessions of questioning.

By Mr. Wieferich:

It is my understanding then that there is no agreement on allocation, and we will go on until the Dr. indicates we may no longer in the same manner as we have yesterday and today, and each party will necessarily reserve its own rights in the event that Doctor directs the suspension or the termination of the deposition.

By Mr. Mann:

That is my understanding. This session ended on October 12th 13.15 p.m. and the cross-examination was resumed by Mr. Albrecht on October 13th 1955 at 10.32 a.m.

By Mrs. Stinnes:

First of all may I say some words. They deal with correcting my last two answers and this will practically alter my last answer, i.e., by my last answer of yesterday. I got flustered because I only heard that you asked me whether I knew about a complaint that Edwagmij had addressed to me. I had all forgotten about that. I only remembered about a new matter regarding Elsa Wagenknecht about which, of course, I got to know, as these letters came to me as registered mail. I may admit that I scarcely opened them. I realized that all these letters were of more or less the same contents so far I read the first phrases. Then I put them into a new envelope and closed it and then I passed them on to my son Otto or to Herr von Papen for further action. Later my son Otto gave me more details about it, and then I told him: "Do as you please. Is there legal advice needed?" He replied: "Yes, I did already look to that. Dr. Klonne at Duisburg, and he is supposed to call on you, and therefore, I cannot keep the whole matter from you, as you have to give your signature to his power of attorney." All that was dealt about with in the usual way. Insofar my answer is dealt with. The two companies you inquired about who served an inditement on me besides Elsa Wagenknecht are, shortly called,

"Controla" and "Agentuur Handelsmaatschappij" in Holland This will rightly answer to your last question before the last one.

By Mr. Albrecht:

It is stipulated and agreed to by counsel that the word "inditement" in the witnesses statement may be read as "complaint".

Q. Have you been advised by your attorneys that one of those suits that have been brought against you will not be defended? A. I know that one complaint (Anklage) Professor Schlubach also served on me on this matter, had already been corrected in the sense that it was unjustified.

Q Now I mean one of the Wagenknecht's complaints. Have you been advised by your attorney that one of the Wagenknechts' complaints are not going to be defended? A Not to be contested? No.

Q Then you do not know that your attorney has requested that Mrs. Wagenknecht withdrew one of her actions, and that your attorney would pay the amount sued for and all her expenses, you do not know that? A. No

Tr 22 Q Now in the claim you filed with the Office of Alien Property in February 1955 you claimed ownership to the entire capital stock of Atlantic Assets Corporation, is that not so? A. Of ccurse, yes

Q And that claim was, of course, incorrect, was it not? A. No, so far I know of, not Apart from, as I did state, 300 Atlantic Asset Shares which at the time I gave to the brothers and sister of my late husband

Q Well did you then correct the claim that you filed in Washington to show that you did not claim all of the capital stock of Atlantic Asset Corporation? A No. That is all in the minutes isn't it, and these minutes are placed before the property Custodian.

Q Then your answer is, is it that you did not file an amendment to your claim to correct it. Is that correct? A Insofar as I did not inform the Property Custodian directly, but only indirectly through my deposition or the minutes respectively.

Q Now, Mrs. Stinnes, what else did you claim in your 1955 claim filed in Washington, that you did not own, will you tell us that? A. This

I do not know; I did already several times state that one item or other might have been unjustly claimed as my property, and that I had instructed my attorneys in United States of America to investigate about it.

Q. Well, before you filed your 1955 claim in Washington, did you read the various Vesting Orders under which the Attorney General vested the property involved? A. Several of these Vesting Orders were placed
Tr 23 before me if all, I really cannot say anymore. I only knew that the United States of America vested everything they considered my personal property.

Q. Well, after you filed your 1955 claim did any of your husband's relatives remonstrate with you that your claim also claimed what they own? A. Yes I think my nephews Hans-Heinz Stinnes and Otto Fischer, my nephew's son, and this had been cleared immediately that this was an error. As to to other remonstrations I do not know of up today.

Q. Well, I am interested in knowing how you satisfied these nephews; was a letter written to them? A. No, I left that to my attorney-in-fact. I myself did not receive a letter about it.

Q. Well, did Otto, your attorney-in-fact give your nephews something in writing to protect them? A. I do not know anything about it.

Q. Will you please give instructions to have produced whatever was given to your nephews in writing to protect them against the claim which you have filed against their property in Washington, will you please do that? A. I shall do everything necessary.

Q. Well now, I believe you testified that Atlantic Assets Corporation or the United Trading Corporation was organized for the purpose of receiving the 400,000 shares of Hugo Stinnes Corporaton stock that you proposed to exchange for 2,500 or 3,000 shares of Atlantic Assets stock. Is that correct?

By Mr. Mann:

Objection: I believe that the question as asked did not accurately reflect the petitioner's previous testimony.

By Mr. Albrecht:

Tr 24 I have merely asked her whether she so testified.

A I repeat again Atlantic Assets Corporation being a successor of United Trading Corporation, was established in order, being a holding company, to receive my 400,000 Corporation shares by way of holding. At the same time a contract of exchange was formed between Corporation on the one hand and Atlantic Assets on the other hand after Atlantic Assets had increased their capital up to 100,000, in order that at any time - I stress "at any time" - I should be entitled to exchange against 3000 Assets shares my Corporation shares to the amount of 400,000. These were the bare facts

Q But Atlantic Assets Corporation existed before that exchange of stock took place, isn't that true? A. The question cannot be to the point, as no exchange of shares took place yet.

Q. Well, all I am getting at is to fix definitely that Atlantic Assets Corporation was in existance, when you received your stock in Hugo Stinnes Corporation in America, isn't that true? A I cannot possibly answer this question I received my Corporation shares when the loan had come off alright Atlantic Assets Corporation was established later for at the beginning the Corporation shares were held by United Trading, and as I said before Atlantic Assets was a successor company So how could it appear to me or how could it be proved that at the time the Corporation shares were not yet in my possession when Atlantic Assets was formed. I cannot make any sense out of that

Q I think you are confused, and I shall, therefore, come back to the subject later on now turning to the claim which you filed with the Office of Alien Property in 1948; that claim you now maintain--was incorrect--do you not? A This claim of 1948 was not incorrect it was

Tr 25 not complete

Q. In other words you now say that you claim more property than you claimed in your 1948 claim. A. Yes, of course.

By Mr. Mann

Mr Albrecht, could we take a short recess?. According to my watch it is now 11.33 a m

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By Mr. Mann:

My watch shows it is now 11.46 a.m.

Q. Now that claim which you filed in Washington in 1948 was subsequently corrected by your son Otto as your attorney-in-fact, was it not? A. It was not corrected, it was completed.

Q. And that was in the year 1952, was it not? A. I think it was in February 1952.

Q. It was actually on August 1, 1952, was it not? I suggest that you look at Wagenknecht's Exhibit No. 32. A. I do not understand one English word here. What does mean the word "consideration" in this respect?

Q. Well, I don't wish to make it difficult for you. I only want you to tell us whether that letter is the letter which Otto wrote to complete your claim. Is that true? A. Yes surely.

Q. But do you maintain that that letter from Otto completes your 1948 claim? A. May I see again the date of this letter?

By Mr. Albrecht:

Tr 26 First of August 1952.

By Mrs. Stinnes:

This was just a part of the whole matter and only a partial deposition.

Q. Well, if you had decided to relieve your conscience in 1950 and to public acknowledgement of certain alleged camouflaged foreign property, why didn't Otto in 1952 claimed all of your alleged camouflaged foreign property? A. Because he thought that was the right thing to do.

Q. But at that time Otto already had your power of attorney for two years, did he not? A. Yes.

Q. Well, why didn't you tell Otto 1952 when he wrote to the Office of Alien Property to claim all of your alleged camouflaged foreign property? A. He did claim it indeed.

Q. But all Otto's 1952 letter concerns is the amount of Hugo Stinnes Corporation stock that was exchanged for the Atlantic Assets Stock claimed in your 1948 claim, -- nothing else, is that not so? A. I must have Otto's

letter in a German translation otherwise I cannot say anything about it, as there appear several words which are quite unintelligible to me and which make the whole letter unintelligible for me.

Q. Let me put it this way. In your 1948 claim you claimed 1,500 shares of Atlantic Assets Stock and 1,050 shares of Hugo Stinnes Corporation stock. In your 1955 claim you claimed a great deal of other property; now my question is: Why didn't you tell Otto, your attorney-in-fact in the year 1952 when he wrote to the Alien Property Custodian to claim all of the alleged camouflaged foreign property that you claim? A. As I got to know about this letter as late as now, I could not possibly instruct my son Otto when at the time he wrote that letter.

Tr. 27 Q. Why not. Otto was your attorney-in-fact in 1952 and didn't he consult with you when it concerned a matter that was of interest to you? A. I am convinced that Otto had one reason or other for not advising me in this case. Maybe I was very ill at the time perhaps in hospital. I do not know. After all I got to know about this letter as late as now, and I can only wonder how a letter from my son can get into your hands, Mr. Albrecht?

Q. To relieve your mind, the copy of Otto's letter was supplied by the Attorney General Mr. Wieferich when we examined your son two years ago. Now my next question: Isn't Otto informed as to all of the alleged camouflaged foreign property which you claim as your own? A. Of course. Otto knows all about it.

Q. And as your attorney-in-fact Otto has, of course, been instructed by you to do everything to protect your interests, has he not? A. Certainly, and that was the reason why he contacted the lawyers' firm at Washington Mr. Pehle & Mr. Mann and his other collegues in 1952, and that was in order to look to my interests in the future.

Q. Now Otto was fully informed with respect to the exchange of your 400,000 Hugo Stinnes Corporation shares for Atlantic Assets stock, was he not? A. Yes.

Q. And he participated in negotiations whereby you received Atlantic Assets Shares for your Hugo Stinnes Corporation, did he not?

A. What negotiations did you hint at?

Q. Well, the negotiations as the result of which you agreed to transfer your Hugo Stinnes stock to Atlantic Assets Corporation and received in turn Atlantic Assets stock. A. These were two contracts

Tr 28 and they were made by my son Hugo and not by my son Otto. The matter was a verbal agreement of exchange, namely 3,000 Atlantic Assets against 400,000 Corporation stock. This agreement had to be an oral one otherwise I should have run the risk that the German Government might have forced me to sell that Corporation stock at that time, as the stock contained German property. On the other hand an option was agreed to, vice versa: Corporation and Atlantic Assets which in the event that the German Government would call upon had to safeguard the German property by all means which was included in the Corporation stock. These are the facts laid down by then by my son Hugo.

Q. How could the German government have forced you to sell your Hugo Stinnes Corporation shares at the time you received them? A. It was not I who could force the German Government, but it was the German Government who could force me.

Q. And my question to you is by what authority could the German Government force you to sell your Hugo Stinnes Corporation shares? A That the German Government could do any time, as at the time there was a great shortage in foreign exchange and therefore, they could force any German -- so far I know my Corporation stock was included in my property tax return -- to bring his foreign property into Germany.

Q. But if the German Government could compel you to sell your Hugo Stinnes shares, they certainly could have compelled you to sell your Atlantic Assets shares, isn't that true? A. No. There you are wrong. By the option agreement one stock was joined to the other and secured like that. The German government couldn't extend its authority to American property, and Atlantic Assets were in America and were American property.

Tr 29 Q. But that is just my point. The Atlantic Assets shares were American property, but so were the Hugo Stinnes Corporation shares

American property. How could the German Government compel the sale of only one and not of the other? A. This you should have explained by a lawyer; he will look to that better than I could possibly do But the Corporation stock I had been mentioning were not American property, they were my own property and therefore German property, but they contained and meant German industrial property, German substance, which by no means we would tolerate to have been shifted over to America, as little as today, and these could only be secured by that option agreement between Atlantic Assets and Corporation. How all this had been effected in all detail, this please, ask a lawyer

Q. I don't understand your answer because it is a fact, is it not, that it wasn't until the summer of 1931 that according to German law there were restrictions on the transfer of foreign exchange, and German citizens could be compelled to deliver their foreign securities to this Government; is that not so? A. The agreements I mentioned were before 1931, and they were made a short time after all the American loan had come off alright, and that, I feel sure, was before 1931, as Junior himself made them, for I know that for special reasons he could not go over to America between 1928-1930, so far I know.

Q. But that is my point; it was only in 1931 that Germans finally could be compelled to deliver foreign property holdings to the German Government, is that not so? A. I cannot possibly say whether the years indicated are correct, and that will not matter at all so far I am concerned In these critical times we have been and still are living in since 1914 one could not be careful enough about measures of caution, and, therefore, any possible measure of caution was justified

Tr 30 Q. When Mr Wieferich and I took the deposition of Otto in July 1953 he testified that the only property which you claimed on your behalf was 1,500 Atlantic Assets shares and 1,050 Hugo Stinnes Corporation shares. Did he tell you that he had so testified before us? A. No.

Q. But that testimony of Otto agreed with the claim which you had filed in 1948 with the Office Alien Property, did it not? A The 1948 claim was filed by my son Hugo perhaps in connection with Otto that I

don't know. Between 1948 and today or in 1953 so far I know -- I sometimes mix up the dates -- there is a long space of time, and there Otto might have changed his mind a good deal, and it may be up to him to correct his statements.

Q. I merely wish to ask you a very simple question. Otto's statement of 1953 was in complete accord with the claim that was filed on your behalf in 1948, isn't that true? A. So you say, but I myself did not read it.

By Mr. Mann:

Mr. Albrecht, we resumed after the recess at 11.46 a m., and I now have 12.51 p.m.; I suggest that pursuant to Dr. Berg's admonition to us we stop now.

By Mr. Albrecht:

I quite agree, of course.

Counsel Meeting on 13th October 1955
at 15 p.m. The Witness was not present.

By Mr. Mann:

Mr. Albrecht, some time ago you asked that we obtain a certified copy of the will of Konsul Wagenknecht; due to the length of time required to obtain a court-certified copy, a type-written copy was placed in the
Tr 31 record and marked for identification as "Wagenknecht Exhibit No. 18". We have now been able to obtain a certified copy of that will which I now hand to you.

By Mr. Albrecht:

I am glad that it has been possible to obtain this certified copy, because I noticed upon comparing the type-written copy which you previously produced with a type-written copy in my possession that there was a difference between the two textes, and the difficulty arising from that difference should, of course, be cured by placing in the record the certified text of Consul Wagenknecht's will. I suggest that we now mark this certified copy as Wagenknecht's Exhibit No. 33 for identification.

By Mr. Mann:

Mr Albrecht. You noted in the record that Wagenknecht's Exhibit No 25 for identification consisted of a part B and you asked us to make a further search to see if part A of such form could be found. A further search has been made, and we are unable to find a part A. However, I do call your attention to the fact that the Annex to the property declaration (Vermögenserklarung 1946) part B is entitled part A, and part B. Accordingly I believe and I am advised that the form is complete.

By Mr. Albrecht:

Well, whether it is or not I am inclined to believe that the annex attached to the property declaration probably satisfies our purposes in making a part of the record the detail respecting the form investments of the witness.

By Mr Mann

Mr Albrecht. At page 253 of the Dusseldorf record you asked that we produce a copy of any claim which Mrs Stinnes had filed with the Argentine Government. A search has been made and no copy of that claim has been found. As a matter of fact we have ascertained through our inquiries that no claim has yet been filed with the Argentine Government; but it is expected that one will be filed when the petitioner's Argentine attorney deems it appropriate to do so. You also requested that we make a further

Tr 32 attempt to obtain a more complete transcript of Mrs. Stinnes' account with the Hugo Stinnes O H. We have asked the appropriate officials of the O H. to investigate this matter. At this point I want to tell you that insofar as each and every production request which you have made, is concerned either we have produced the document requested and if we haven't produced, such is not in the possession of the petitioner. One exception, of course, is Mrs. Stinnes' will which was exhibited to you, but not made a part of the record, however, prior to leaving Dusseldorf I gave the Consul a copy of Mrs. Stinnes' will which he placed in a sealed envelope and will associate it with that portion of the deposition.

By Mr Albrecht

I would like to correct for the record your statement of the request I made for the production a statement of Mrs. Stinnes' personal assets. You

have produced a statement (Wagenknecht's Exhibit No. 19) from the Hugo Stinnes O. H. showing the percentage of the capital assets of the firm owned by her together with a detailed statement of those capital assets of the firm. Presumably there are assets owned by the witness which are not included in the list of assets of Hugo Stinnes O. H. You will remember that I have already called your attention, Mr. Mann, to Sec. 2 of the partnership-- agreement of Hugo Stinnes O. H. (Wagenknecht's Exhibit No. 20) from which it appears that when the partnership was founded, Mrs. Stinnes did not place all of her capital assets in the firm. It would appear, therefore, that in order for us to get an entire view of the witness' capital assets, we must produce for the record more than merely a statement of the capital assets of the partnership. It is precisely the detail of the witness' personal holdings not included in the list of the capital assets of the family partnership that I think it is important to make a part of this record and such a list should be produced as of a date fairly contemporaneous with the death of the witness' husband in 1924, and it would also be useful to have a similar list of assets as of a date shortly after the American loan was obtained in 1926 and another list of a fairly recent date-- say the end of December 1953 or 1954.

Tr 33 Now I was not aware that a copy of the witness' last will had already been enclosed in an envelope with instructions to the American Consul in Dusseldorf that it be annexed to the transcript of the deposition taken there. I am not clear at this time what statement may have been made if any for the record with respect to that transaction. I seem to recollect that none has been made. Moreover I believe that while I have been shown a copy of the witness' will which is in the German language, no translation of the same has been shown to Mr. Wieferich. I am, of course, not interested in adding to any difficulties that may exist between members of the witness' family, and with that in mind I would agree to forbear questioning the witness with respect to her will. I think, however, it may be of some importance that the will become part of the record of this deposition--as an exhibit marked for identification, and in such event, of course, all parties would be entitled to receive copies of such will, and I

think that so far as I am concerned I would like to obtain a copy of that document, and I assume that the Attorney General would also want a copy of the same

You will remember furthermore, Mr. Mann, that this morning I also requested the witness to produce for the record such communications as may have passed between Otto Stinnes and his cousins Hans-Heinz Stinnes and Professor Fischer that would reflect the witness' withdrawal of the claim she has asserted with the Office of Alien Property to ownership of the Atlantic Assets shares owned by Professor Fischer and Hans-Heinz Stinnes.

On September 27th I requested of the witness the production of the investigations conducted from 1950 to date on the basis of which she filed her latest claim in February 1955 with the Office of Alien Property. Perhaps I may have expressed myself differently on that to the effect that on the basis of such investigations the witness filed a copy of the claim filed with the Office of Alien Property with the German Tax authorities.

On the same day I made a blanket request of the witness for the production of all her proofs of ownership of the camouflaged foreign property
Tr 34 - which she claimed to own. The witness agreed to attempt to comply with this request, but asserted that she was unable to say whether she would be able to do so.

On September 26th I asked the witness to produce copies of all correspondence or other communications that passed between her or her son Otto Stinnes or any lawyer on her behalf and the German tax authorities together with all enclosures to such letters or other communications.

I hope you won't mind my repeating that I have requested some weeks ago some record of whether kind it might be — that would give us the details of the capital assets and property holdings in the estate of Hugo Stinnes Senior. I appreciate, of course, that you have already informed me that a search has been made and that it has been unproductive. I am led to repeat my request, however, for some documentation that will give the court the desired information so that it may be known precisely what the witness' inheritance from her husband's estate consisted of. It was with

that point in mind that I also requested the production of such records relating to the arbitration court proceedings that dealt with the determination of the size of the payment to be made to Edmund Stinnes at the time he demanded to be paid out his share of his father's estate. It seemed to me that the determination of the amount paid to Edmund would, of course, also reveal the detail which we still lack as part of the record of this deposition of the property holdings included in the estate of Hugo Stinnes Senior.

I probably need not repeat that unless some of this very important documentation is produced I shall be severely handicapped in completing my cross-examination of the witness, and if this handicap continues I shall, of course, regretfully have to reserve all my rights in the premises for the protection of the interests that I represent.

By Mr. Mann:

Mr. Albrecht, I will attempt to answer again your various production requests. At the outset, however, I must again call your attention to the fact that we have to the best of our ability complied with your oral production request, as I have said repeatedly during this deposition I do not feel
Tr 35 that we are required to do so. In this connection I would draw your attention specifically to Rule 27 of the Federal Rules of Civil Procedure. That rule provides for the perpetuation of testimony and specifically states that in such cases the court may make orders of the character provided for by Rules 34 and 35. I think that you should have availed yourself of a court order for the production of documents. I do not recall any such provision in the court order pursuant to which this perpetuation is being made. However, I reiterate that we have to the best of our ability supplied you with the documents requested which are in the possession of the petitioner or are otherwise available to her. We have done this out of a spirit of co-operation, in order that this perpetuation might be as complete as it possibly can be.

Coming now to your specific request with respect to Mrs. Stinnes' assets outside of the family partnership, the Hugo Stinnes O. H., a search is being made, and I expect that tomorrow we will be able to give

you the results of that search

In this morning's session of examination you asked for any correspondence which had passed between Mrs. Stinnes or Otto Stinnes to the heirs of Annie Fischer and Hans Stinnes. We have been unable to find any correspondence, however, I have been instructed to advise you, and I want to make it a part of this record that to the best of our information Mrs. Stinnes' German attorney Dr. Fabian v. Schlabrendorff has advised the attorney of the heirs of Hans Stinnes that the petitioner does not claim the 500 shares of Atlantic Assets which during his lifetime were owned by Hans Stinnes. We are further informed that he has advised the attorney for the heirs for Annie Fischer that the petitioner does not claim the 500 shares of Atlantic Assets owned by Mrs. Annie Fischer during her lifetime, and the same is true of the 125 shares of the Hugo Stinnes Corporation. Mr. Albrecht, the petitioner has directed me that as soon as this deposition is completed to clarify the claim which she has filed with the office of Alien Property to show that she does not claim those assets which I have just mentioned.

Tr 36 With respect to your comments and repeated request for a copy of the petitioner's latest will let me say first that a certified copy of the will was given to the Consul Dwelly in Dusseldorf without comment other than my request that he place the will in an envelope and seal the same in my presence. He complied with my request and marked the outside of the envelope to show that same contains a copy of the last will of the petitioner. As I have stated before I cannot see that this will is relevant to these proceedings in any way, and if I am not mistaken you have had an opportunity to read the will in German. Accordingly I repeat the the petitioner will not produce a copy of that will for this record other than the sealed copy which has been left with the Consul.

I believe, Mr. Albrecht that we have replied heretofore to your above mentioned September 27th request that the petitioner furnish you with the results of investigations made subsequent to 1950 and which served as the basis for the claim which she executed under date of February 3rd 1955. As the record clearly shows I and other members of my firm

had considerable correspondence with Mrs. Stinnes, her attorney-in-fact and her German attorney relative to her claim. I have claimed the privilege of this correspondence and I am informed that she intends personally to claim it again prior to the completion of the deposition.

The petitioner has responded to your blanket request for the production of all proofs of ownership which she may have of her camouflaged foreign property.

You have again repeated your request of all correspondence that passed between Mrs. Stinnes, her attorney-in-fact or her German attorney and the German tax authorities. Mrs. Stinnes has responded to that request. I repeat that neither she nor her attorney-in-fact have in their possess any correspondence which passed between them or her German attorn y and the German tax authorities. I must repeat again that we have made an extensive search to attempt to find some inventory of the holdings of Hugo Stinnes Senior at or about the time of his death. We have : inable to find anything either in the petitioner's files or other files v. ich may be available to her or in the Muhlheim court records.

Tr 37 Lastly I come to your request for a statement of the assets which were used to compute the settlement made with the petitioner's eldest son Edmund. The petitioner does not have any such statement or list in her possessic . She has suggested that if such a statement there be, it might be in the session of Edmund Stinnes, a resident and citizen of the United States of America. However, the petitioner has no reason to believe that such a statement is in existance.

By Mr. Mann:

Mr. Albrecht and Mr. Wieferich, I believe that we have informally agreed that the signature of the petitioner will be waived. Accordingly I would like the record to show our agreement that signature of the petitioner for both portions of this deposition is waived. If that correctly sets out our agreement would you, Gentlemen, be good enough to so indicate for the record.

By Mr Wieferich:

It is so stipulated

By Mr. Albrecht:

I also agreed to so stipulate on the assumption that the American Consul in Hamburg will certify that part of the deposition taken in the hospital. If for some reason such certificate cannot be given to the record taken in Hamburg then I think we should be able to agree on some other form of stipulation.

Let the record show that the session started on October 14th at 10.43 a.m. and the cross-examination was resumed by Mr. Albrecht.

By Mrs. Stinnes:

To begin with I may say some words. Mr Mann instructed me that you Mr. Albrecht again asked to have produced the correspondence between my American and my German attorneys and my son and myself.

Tr 38 Mr Mann advised me that this correspondence is privileged and under official secret, and that I am entitled to decline the disclosure of this privileged correspondence. I herewith avail myself of this right of mine

Q. May I continue? A Yes, please do

Q. You have told us that since 1950 you had caused an investigation to be made as the result of which you filed a new claim with the Office of Alien Property in February 1955, and I asked--and I have previously asked--you for the production if possible of the report of that investigation, and I ask you again, is such a report available? A Such a report regarding the investigations in the years 1950 and 1951 most probably went to the successor of the lawyers' firm who for these two years were dealing with preliminary investigations and accordingly today is with the lawyers' firm Mr. Pehle and Mr Mann

Q Well, will you be good enough to have produced a copy of those preliminary investigations in 1950 and 1951? A I'll pass on this wish to my attorneys who are occasionally dealing with these matters for me.

Q After you filed your new claim with the Office of Alien Property

in February 1955 did you advise Mr. Unger, your director of Finances that such a claim had been filed? A. That I don't know. I did not bother about that.

Q. Then your answer is that you yourself did not tell Mr. Unger, is that not so? A. No. I myself did not advise Mr. Unger.

Q. Did your attorney-in-fact Otto advise Mr. Unger of that fact? A. That I don't know of.

Tr 39 Q. Have you at any time told Mr. Unger that you had shown a copy of your 1955 claim to the German tax authorities? A. No.

Q. Did you tell your Director of the Legal Department that you had filed a new claim in February 1955 with the Office of Alien property? A. No.

Q. Did you advise the Director of your Legal Department that you had shown a copy of your 1955 claim to the German tax authorities? A. No.

Q. Well then, how is it possible today for your Finance Director and the Director of your Legal Department to prepare correct declarations for the German tax authorities? A. I leave all these actions to my attorney-in-fact, as to a certain extent I feel myself kept out of the matter by my illness.

Q. Well, but you have been advised by your son Otto, have you not that tax declarations have been prepared on your behalf since 1950, have you not? A. For the moment I cannot recollect that.

Q. But you have signed numerous tax declarations since 1950, ha e you not? A. Well, that may be.

Q. Didn't your son Otto ever discuss them with you? A. No.

Tr 40 Q. Well, who submitted these tax declarations to you for signature? A. I suppose the Finance Department or the Legal Department. I don't know, really I don't know at all.

Q. It was the Duty of the Legal and Finance Divisions to prepare such tax declarations for you, was it not? A. Yes.

Q. Well, when you signed these tax declarations did someone from the Finance Department come over with the declaration and ask you to sign? A. No. That we didn't use to do. I always got the declarations

by some messenger who brought me the whole correspondence

Q I wish you would look at this copy of your tax declaration for 1940 (Wagenknecht's Exhibit No. 11) Your son Otto testified in 1953 that that was a correct report and you say now that it is incorrect, do you? A. These are all property tax declarations of the year 1944.

By Mr. Albrecht:

Q I am afraid you did not understand my question, and I shall ask Miss Korner to read it for you again

(Question re-read to the witness.)

A I did not say a single word to the extent that the report of my son Otto should be incorrect, and I cannot say anything about these reports of my son, and I may add that between 1953 and 1955 there is a space of two years and within two years' time good deal of things may change

Q I think you still have not understood my question My question is: Your son Otto in 1953 said that this tax declaration (Wagenknecht's Exhibit 11) was a correct declaration, and I ask you whether it is correct or incorrect A That is out of my judgment

Tr 41 Q. Well, if you give that answer then I must ask you to look at Page 3 of this tax declaration and ask you to point out to me whether there or anywhere else you have listed any part of your alleged camouflaged foreign property A No, this one obviously had nothing to do with the property report of this tax declaration which dealt with quite a particular company.

Q I don't understand your answer Let me ask you whether at any time since the filing of this tax declaration you have filed an amendment with the tax authorities to include your alleged camouflaged foreign property A. I think I did already make it quite clear that by copy of my claim I informed all concerned that my tax declarations filed by me up to 1955 were not correct by handing them over these copies of my present claim.

Q Well then, your answer is, is it not, I am sorry I have to say it, that your tax declaration (Wagenknecht's Exhibit 11) is a fraudulent report, is it not? A I regret not to be able to follow your view of the matter for a tax declaration referring to a particular company -- in this case the community of heirs (Erbengemeinschaft) of the Coupienne estate

-- which apparently has nothing to do with my personal property, apart from the minute, the preposterous tiny little share which I had in this community of heirs at all, as I was no direct heiress, but only by means of the small share of my son Edmund, who long before, had already gone out of it, but what has that to do with my personal property which had been administered in quite a different place and which had been accounted for quite otherwise, I mean to say what has this to do with this tax declaration?

Q. Mrs. Stinnes, you haven't answered my question, and I shall ask Miss Korner to read it again. A. I gave you my view as to that

Tr 42 matter, and I have nothing more to say about it, Mr. Albrecht.

Q. Well then, do you say it is a fraudulent or it is not a fraudulent tax declaration? A. I have nothing more to say about that indeed.

By Mr. Albrecht:

Mr. Mann, would you be good enough to ask Mrs. Stinnes to give me an answer to my question.

By Mr. Mann:

Mr. Albrecht, it seems we are spending quite a bit of time on these matters which have been hashed and re-hashed on numerous occasions in this record. I believe the witness has today answered your question with the general statement which she made a few minutes ago.

By Mr. Albrecht:

I am not interested in any general statement which the witness might make. I have addressed the simple question to her to find out whether she characterizes her tax declaration as fraudulent or not fraudulent, and I think I am entitled to a "yes" or "no" answer to that question, and I must ask you to be good enough to instruct the witness to answer my question.

By Mr. Mann:

Mr. Albrecht, I really don't understand why you persist in this. The witness has testified all of her tax declarations for a number of years were false, in that she did not show her camouflaged foreign holdings. If you wish to characterize those returns as fraudulent--do so. In my opinion the witness has answered your questions not only on this occasion,

but also on several prior occasions.

Q. I ask you to look at your property declaration for 1953 (Wagenknecht's Exhibit No. 14) and ask you whether you will tell us who prepared that declaration for you. A. I suppose the Legal Department and the Finance Department.

Tr 43 Q. Is that a correct tax declaration? A. Neither the Legal Department nor the Finance Department were in the position of preparing a more accurate and a better declaration, as the Finance Department didn't know anything about the camouflaged property. This so far I know has already several times been brought to the minutes.

Q. And to the present day neither your Finance Department nor the Legal Department have been informed that you claim certain camouflaged foreign property? Is that not so? A. That I do not know, and I cannot say anything about it.

Q. But this declaration shows that you signed it on March 22, 1955, and you now mean to say, do you, that up to that date you had not informed your Director of Finance nor your Director of the Legal Department that you claim certain camouflaged foreign property, is that so? A. I did already answer that I do not know whether they got advised or not, and I just want to add what should I bother these gentlemen with this matter at all. They cannot possibly be helpful about that, and in these times of ours their work is so difficult already and these gentlemen are so overworked that speaking from a humanitarian point of view it would rather appear a crime to bother them with this matter, and even to inform them about it.

Q. Then you are content that your employees continue to prepare and file fraudulent tax declarations on your behalf; is that humanitarian?

By Mr. Mann:

In view of the fact that it may take some time to translate the petitioner's last answer I suggest that we leave her room and permit her a short recess. We can make the translation during the recess.

Tr 44 A. After having informed the Finance authorities at Bonn and at Duesseldorf I fell responsible to these two authorities only I.e. responsible for what i have to pay taxes for. The details about taxing my property

at Mulheim--and there are quite a lot of departments--I want to protect my Mulheim gentlemen from these troubles if I have a say in it, just for the reasons I have just been mentioning, viz. for sheer humanity, as, indeed, today already they are more than overworked, so overworked--that I may stress on this occasion -- that as regards Herr Unger, a man of rather delicate health, we are looking for a really qualified assistant for months already without finding a suitable man. I cannot but say I do not know what really happened in this matter, but I for myself feel responsible for everything today i. e. responsible for tax declarations as against the highest taxation authorities at Bonn and at Dusseldorf. I should like to relieve the Mulheim gentlemen from all work or from all knowledge where they wouldn't have the slightest opportunity of helping me, as they do not know the whole story, all the facts and matters of this kind since 1925 and 1926--by no means. I for myself should not like them to be burdened by this matter, as they couldn't stand it physically and because I should not like to be held responsible if one of the gentlemen should throw a fit one day.

Let the record show that we recessed at 11. 5[illegible] a. m. and reconvened after the recess at 12. 19 p. m.

Q. But Mrs. Stinnes, meanwhile your Director of Finance and your Director of the Legal Division have heard that these tax returns that have been prepared and filed by them have been inaccurate, isn't that so? A. I did already say that I do not know it.

Q. It would not be exactly a humanitarian thing to expect these gentlemen to continue to prepare tax returns which are inaccurate, would it? A. I should think you may leave it to me and to my advisers how to arrange these natters and you yourself need not trouble about that.

Tr 45 Q. Did you ever file with the German tax authorities an amendment to your 1953 tax declaration (Wagenknecht's Exhibit 14) that would correct these tax declarations for 1953? A. That I did leave to my attorneys.

Q. You mean your German attorneys? A. No in this case to all

my attorneys; to my German ones and to my American ones.

Q. Did you give any instructions to your son Otto to cause a corrected 1953 declaration to be filed with the German tax authorities? A. My son Otto stands in agreement with me myself, and in his actions he thoroughly conforms with our attorneys.

Q. Then your answer to my question is "no", is that right? A. By no means, as I do not know how the attorneys advised him about the matter.

Q. But you yourself never signed any corrections to your 1953 tax declaration, did you? A. So far I know of - no.

Q. When did you first hear that Mrs. Wagenknecht had filed claims with the Office of Alien Property for the return of her vested property interests? A. That I don't know. I haven't got the least idea about when I learned about it.

Q. But haven't you already testified in the course of this deposition when you first learned that Mrs. Wagenknecht had filed claims? A. I think this must be a misunderstanding. I just answered a question which I deem to refer to a claim which Mrs. Wagenknecht filed at Washington-, and I do not know when she filed it. What I said yesterday or the day before yesterday regarding her new claim which she filed at Duisburg, about
Tr 46. this claim I learned-say three weeks ago, the exact day I cannot tell. --- I want to correct myself, it was about five weeks ago, as I am here in hospital already for a fortnight.

Q. I didn't ask you when Mrs. Wagenknecht filed her claim in Washington. I asked you when you were told that Mrs Wagenknecht had filed her claim. A. I considered the two facts, viz: the filing and my knowledge of it to be two identical matters, and I do not know when I learned about it.

Q. So if I would have to tell you that Mrs. Wagenknecht filed her first claim in 1948 in Washington, do you now say that you learned of that fact in 1948? A. No, in the year 1948 I had not the slightest idea about it. I was in Mexico, I think, about 1951; and there I did learn that she had sold my property, my Fincas, but about that claim I didn't get any knowledge. - - - I may add that if I should have had the slightest idea about

it, I wouldn't have stayed at her house for one single second even.

Q. But you did stay in her house and you had previously learned in Chiapas that Mrs. Wagenknecht had sold her interests in the Fincas. A. All this I did already testify.

Q. Well then, when did you first learn of Mrs. Wagenknecht's claim filed in Washington? A. A great deal later, I do not know that exact date of it.

Q. Who told you that Mrs. Wagenknecht had filed a claim in Washington? A. I think my son Otto told me about it.

Tr 47 Q. Well, if your son Otto told you it must have been after he became your attorney-in-fact, is that right? A. I am not certain whether I learned it from my son Otto, I only believe so.

Q. Well, did your son Otto at any time tell you how many claims Mrs. Wagenknecht had filed? A. No.

Q. Did your son Otto tell you what property Mrs. Wagenknecht claimed in the claim filed in Washington? A. As to that I cannot give any definite statement either. Maybe Otto told me something, perhaps he gave me some details only. I only know that when I heard about the claim of my sister-in-law I said that I would not be interested in a thing like that, as I do not bother about the doings of criminals against me. A similar opinion I uttered and I acted accordingly when I received these claims, I think they were five- one of them being withdrawn in the meantime-- through the German Court. I put them back in an envelope without taking notice of it and I passed them on. I do not want to get to know about these claims at all. I am already quite fed up with the excitement caused by this. I do not want to have anything to do with these other affairs. My point if you are interested in it, Mr. Albrecht, is this: I honestly believe in the German proverb which runs to the meaning: Time brings everything to light.

Accordingly I told my son Otto that he should me advise about this claim as little as possible. My attorneys would already know what they should do about it.

Q. I am sorry to have to say it, Mrs. Stinnes, but you see you

adopt a very high moral tone as against Mrs Wagenknecht, and you call her a criminal, now it seems to me that the filing of fraudulent tax returns for 30 years is also a criminal matter, isn't that so? A. If
Tr 48 you want to stigmatize that as a criminal affair - my camouglaged property and my attitude toward the taxation authorities about it - I cannot defend myself to that. This I sufficiently expressed in my testimonies why in those days it was simply necessary in Germany and for the Germans in order to save certain property to have them camouflaged like that, therefore, this expression of yours will not hit me, but I think that any righteous person will not compare this attitude of mine, which after all had been initiated by my husband and then largely continued by my son Junior I said compared to the attitude of a person about whom it can be proved and that I did prove, and I shall immediately give you a further proof which I recollected in the meantime, a person of whom it can be proven that when she came to Mexico didn't own a red penny, the husband of whom had been my trustee to whom I had entrusted considerable property and who held it accordingly - that out of the income of this trust-property which income can be proved - he bought some little property for himself I never resented, on the contrary, that I deemed a justifiable reward for his work for me. But he did never go beyond that. I did already mention that if he had been alive and his wife would have suggested to him to act as she herself had been doing, I think he would have divorced her immediately - I stress immediately - him, my reliable trustee I lost - and with him the substance the 50% -per cent- participation in the Giesemann Fincas, the money my sister-in-law got out of it, I can claim back from her by legal proceedings at one occasion or other, but that she goes so far as possibly claiming the whole of my inheritance of Atlantic Assets shares and even of Hugo Stinnes Corporation shares, if you should not call that criminal I should like to know - this may not be a criminal affair in the meaning of somebody going to jail - but above all an unheard break of trust, as a theft, and this furthermore against her own sister-in-law, to whom she was most highly indebted, on the means of whom she had been living for years, when she and her husband

didn't have a penny of their own - if one should not feel indignant about that and if one should not find words about it like that then I do not know what other expressions to use. This, of course, is not meant against you being her lawyer, but only against your client, to whom I cannot apply another expression. Your question, Mr. Albrecht, just laid yourself open to that, and it was nobody else who put that question to me.

Tr 49 I just said I could give you a further proof as to that. When I told you that my sister-in-law and her husband came to Mexico when they were hopelessly poor at that time, and when we wanted to give them a new start in life. When in 1951 I came over to Buenos Aires again - by then my sister-in-law was in Mexico already - then I met one of her brothers, namely Alfredo Lindheimer, a brother of the first marriage of Lindheimer, the father, and then I asked him - we were together for a whole noon - how such a break-down of my brother Edmund could have possibly come about and how all that happened and what he could tell me about that. He was a thoroughly neutral person in that matter, whereas I - when in the years 1925 and 1926 we were experiencing the greatest difficulties here - learned about that by the way only, - then he told me how terrible it had been. My brother hadn't had a red penny. His friends had to help him and his situation would have been quite catastrophe, and it could hardly have been described in which fix my brother was by then, and he had felt so sorry about him, as basically he had been such a decent fellow, and he said, as I myself did already testify when the subject was mooted that the hasty winding up of the Argentine business contributed to it. But he had his own firm after all and he had been practically penny-less. So far he knew his last debts were paid by my eldest son Edmund Stinnes, in order to have him leave The Argentine and Uruguay as a man without debts after all. This is what Elsa Wagenknecht's own brother said about. How could Elsa Wagenknecht possibly have owned the money which she today pretends to own? Occasionally you asked for proofs. Here there is another proof for you. Time and again I recollect one matter or other. I want to have this put on record.

By Mr. Mann:

Let the record show that we adjourned at 13.40 p.m., but that the rather lengthy translation of the petitioner's last answer was not made in the petitioner's bedroom.

By Mr. Albrecht:

It took over 1/2 hour.

Tr 50 The cross-examination was resumed by Mr. Albrecht on October 15th 1955 at 10.34 a.m.

By Mrs. Stinnes:

To begin with some words on my part: Yesterday you asked me for reports by my attorneys who had been dealing with my affairs between 1950 and 1951. Mr. Mann advised me that there are no reports existing, but only current correspondence and that correspondence were privileged. As yesterday I availed myself of my right to claim this privilege for myself I regret to be not able to produce for you anything of the kind.

Q. But before you had retained attorneys, did you not cause an investigation to be made that resulted in a report which you can produce for the purposes of this record? A. No.

Q. Can you recollect today what property you claim in Holland other than Edwagmij and subsidiary companies? A. I think I did answer that yesterday already.

Q. No, yesterday you said you could not recollect the names, and I, therefore, ask you today. Can you recollect what property you claim ownership of other than Edwagmij and subsidiary companies. A. I believe to remember that I gave you the names of two companies among others "Controla" and . . . that I cannot remember for the moment, it was another Company called "Maatschappij". I may remember it later on.

Q. I think you still have not understood me. Let us forget about Edwagmij and its affiliated companies. Can you remember what other property you claim ownership of today in Holland? A. I must try to remember it. For the time being I am not able to give you up a name.

Tr 51 Q. But you do claim other property in Holland which is part of your camouflaged foreign possessions, don't you? A. So far I can

remember, yes.

Q. Do you claim any other property interests in Switzerland other than Fundus and Mira? A. I believe that today Fundus and Mira are held together by Controla.

Q. Then I suppose that Dr. Brunner is the man who has charge of all three companies today. Is that true? A. As to that I cannot say anything. I did already tell you that up to 1950 I had no idea about all these companies. In order to find out now what and how had been shifted here and there and to clear this up that is quite a task. All that has been shifted here and there was not a matter begun by my late husband, but it was effected later. I cannot keep that in my memory without documents. That I must avow honestly.

Q. But since 1950 five years have passed, hasn't your son Otto, your attorney-in-fact advised you with respect to these matters in these last five years? A. No, after the separation from my second son Hugo my son Otto stood exactly before the same vacuum I myself was up to. Therefore, we did retain attorneys who know better how to look behind the screen and to clear everything up.

Q. Well, do you want the court to believe that in five years' time neither you nor your attorney-in-fact have to-date been able to point to any proof to support your claim that you own certain alleged camouflaged
Tr 52 foreign property? A. I do not mean to make the Court believe anything. If this will appear inexplicable to you that I cannot give you more detailed answers then I can but advise you to have a talk with my attorneys yourself, but as you are mentioning proofs, and as you several times called on me to produce proof, e.g. for my hundred per cent ownership of Edwagmij, I cannot produce written proofs much to my regret, but I may - may-be - mention several very material facts which at least are very valuable as proofs in writing.

Firstly: I should like to say 1500 Atlantic Assets stock held for me by Erich Will as Trustee, were brought over to Edwagmij after he resigned.

Further that out of this block 900 shares were passed on to Mr. Rieber somewhat later. That you may consider to be my property -

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expressly my property -, and when the United States Government vested all German property Mr. Rieber handed them over to the United States Government, i.e. to Office of Alien Property Custodian with the express remark that it were my own property that you may have confirmed by Mr. Rieber himself.

Secondly: When my daughter Clarenore had returned from her trip around the world she demanded to have the legal portion of her father's estate paid out which, as has already been stated on record she had been living like that up to then by my request and by the request of her attorney, and then she did demand to have it paid out. As that could not be effected through me myself, one of my children or other had to look to it. So she made an agreement with Otto and Hugo, and they agreed on a certain amount which had been arrived at on a certain basis. She got an account with Edwagmij accordingly, and for many years she did draw on that account with Edwagmij.

Thirdly: Several few weeks ago - I stress a few weeks ago - my son Otto asked his cousin Hans-Heinz Stinnes for the information from
Tr 53 whom he had received the Atlantic Assets stock at the time, and the answer was - from Eswagmij.

Fourthly:

On the ground of the record you may remember that during the inflation years my late husband in order to secure the livelihood of his mother by all means, bought from her certain securities. Among these securities there were also German Mining shares (Kuxen) of Mathias Stinnes Coal Mining Comp. (Zeche). These Mining shares are still held by Edwagmij today.

If these should not be real proofs referring to transactions after all which I continually - on the one part my late husband so long he was still alive and then I myself continually I had carried on with Edwagmij without needing the consent of anybody then I do not know what should be a proof.

Q. I don't know what these examples are supposed to prove, but if I have a deposit with a banking institution and I make withdrawals therefrom that doesn't prove my ownership of the bank, does it? A. The

proofs given by me do not only refer to the deposit owned by my daughter, but to the whole development, but if you should not accept these proofs as such then I cannot help it. Then you had better wait for further proof to be given to you by my lawyers.

Q. You have admitted now, Mrs. Stinnes, that you have no written proof of your claim to ownership to Edwagmij. Now it is a fact, is it not, that you have no written proof to any of the alleged camouflaged foreign property which you claim? A. That may be your own opinion, Mr. Albrecht, as regards Edwagmij which appears to be the main object, it is inheritance of my late husband, inheritance through my late husband and that will be proof enough, and as to the camouflaged property I could not possibly keep any proof in Germany.

Tr 54 Q. Well then, what I say is correct, you have no proof to support your claim to any of the foreign properties that you claim ownership of, isn't that so? A. I did already say that I have no other proof than the little proof in writing which I did already mention.

Q. Well, now tell us, if you can, how you know that Edwagmij today still owns the Kuxen of the Bergwerk Mathias Stinnes that at one time were owned by your husband's mother Madame Coupienne? A. This has been the result of a respective inquiry with the Director of the Stinnes Mining Companies, Herr Generaldirektor Broche, besides you are at liberty to look up in the share register of the Mining Company (Kuxenbuch) that what I say is true.

Q. Well now, comin g back to Clarenore's account with Edwagmij from which she is supposed to have made withdrawals. The fact that she had that deposit and the fact that she made withdrawals from it was not proof that Edwagmij was your property, was it? A. That is a matter of opinion. As to me myself it is a proof, indeed. If a person will carry on business transactions like that for years and years and also correspondence with its manager, Herr von Linsingen, that would only have been possible on the ground of the fact that this company belonged to her mother. Let alone the fact that this money had been deposited there and not elsewhere with anybody in Holland will be proof enough for me. Besides I

will leave it to my daughter Clarenore to produce for the Court further proof in this respect at a suitable date.

Q. Yesterday you deplored that your loyal trustee Don Edmundo and Albert Jensen were dead. Dr. Brunner is also claimed by you as a trustee. What have you done with Dr. Brunner since 1950 to ascertain what may have happened to the alleged camouflaged property which he held for you in Switzerland? A. I did already say that from 1950 my son and I left

Tr 55 everything to our attorneys.

Q. And by your son you mean, of course, your son Otto who holds your power of attorney? A. Since 1950 by my son Otto.

By Mr. Mann:

Let the record show that we adjourned for a short recess at 11.39 a.m. and have reconvened at 12.04 p.m.

Q. That little house that you told us yesterday that Don Edmundo bought when he went to Mexico that was located in Cuernawaca, wasn't it? A. Well, that had been bought by my brother Edmundo, as his wife who was of rather poor health and who could not stand the climate and the thin air of Mexico City, he bought it at Quernawaca, and that is the house I meant.

Q. Now, he bought that house in 1938 didn't he? A. I have not the least idea when he bought it.

Q. Have you ever seen that house? A. Yes, I had a look to it once.

Q. When was that? A. That I do not know.

Q. Was it before the war? A. I cannot for the moment exactly indicate the year when I was in Mexico, no it was after the death of my brother. My brother, so far I remember, died in 1946, so it must have been after 1946.

Q. That little house in Cuernawaca was a very large house, was it not? A. For two people it was large enough, and there was also some

Tr 56 land with it, a large garden.

Q. Well, you wouldn't call it a cheap residence, would you? A. That I cannot judge at all. I have not the least idea what the prices at

Mexico were by then.

Q. But Mrs. Wagenknecht also has a residence in Mexico City, has she not? A. At the time she was living in Mexico in a house which she had rented.

Q. When you were in Mexico 1951 you stayed in her house in Mexico City, did you not? A. All this is already recorded in the minutes. To what I said at that time I may only add that only finally when I returned from a visit to my Giesemann friends at Chiapas I passed only one night in that house and that I did not live there together with anybody else, as my sister did already fly back to the United States of America before the break of night. At the time you asked me about it, and then I was not quite certain about it. But that I remembered later on. I had been staying at that house for one night only, then I went on by plane to the United States. I simply had to stay there, as it had been the main object of my journey to Mexico to call to task my sister-in-law regarding her behaviour in respect of my property. That I could not possibly have done, as up to that time she used to avoid me - if I had not been sleeping in that house for one night.

Q. Well, that does not agree with your previous statement, but never mind-what I want to ask you: You knew that your sister-in-law Mrs. Wagenknecht did own a house in Mexico, isn't that so? A. I do not know why my today's statement should not be consistent with my former one. At the time, so far I remember, I did verbally testify that to my amazement I was received at the aerodrome by my sister-in-law and my sister of whose presence in Mexico I had not the slightest idea,
Tr 57 and that then I resided with my sister-in-law. Then you asked me whether I had been staying there all by myself. Then I remember to have answered that I did not know that, and that I had to try to remember it again. Today I supplemented this testimony, as later on I succeeded in remembering all that, - that I had not been in that house together with my sister overnight, as on that same day my sister did already fly back to the United States of America, besides my daughter, of course, I had been there all by myself, whether Irmeta had been there as well,

I do not remember, and I have no idea about it, and that wouldn't matter either; and one night only, for on the following day I flew back to the United States myself. I further testified that she had been living in a house, whether that house was rented or whether it belonged to her that by then I might not even have known or thought of to say that that house where she was living was rented. So far I knew the house she had been living in was rented by then. But I cannot give a certain statement as to that, not even today.

Q. But, both the Mexican City house and the Quernawaca house were such houses that you would have been glad to live in, wouldn't you? If your demands for more space hadn't require more rooms? A. What do you mean by that question, I cannot say anything about it. None of the two houses pleased me so that I would have liked to possess them.

Q. Well now, you also knew, did you not, that Mrs. Wagenknecht also had a house at Acapulca, did you not? A. So far I can remember I had been told that she was about having a house built at Acapulca, more I cannot say.

Q. Well now, do you remember that awful time when Don Edmundo was so severely injured in an automobile accident? A. Of course, for I took all pains to keep him back in Germany. I suppose he had suffered a concussion of his brain, and he hadn't been yet examined by the Doctor,
Tr 58 I suppose it was a concussion of his brain, and no fracture of his skull, as you had indicated before. I think it was written down on record that fracture he did not suffer, but as I suppose a concussion of his brain only, it may have been a slight one only, for during the long voyage during which he on the advice of his doctor and of us ourselves he had to keep very quiet. That concussion must have been cured in all probability, because immediately after his return he was again able to attend his business matters.

Q. Well, the day after that accident which you stated resulted only in a concussion, Don Edmundo and your sister-in-law returned to the Argentine by ship, did they not? A. My sister-in-law hadn't been there at all, my brother was alone, he was only accompanied- and, therefore, I

said alone - by his youngest foster-son whom was called Alfredito, and just because of that, as he was accompanied by him, he did not tolerate to be kept back in Germany, as I had been asking him, as his wife over there wanted to have Alfredito back by all means.

Q. So your answer is that the day after the accident Don Edmundo returned to the Argentine by ship, is that so? A. I myself accompanied him on board ship, and I recommended him to the Doctor telling him to do everything possible in order to have his health restored soon, and I want to add, so far as I remember.

Q. When did all this happen? A. That I cannot say really.

Q. Well, let us try to fix the time at least approximately, was it around 1930? A. I really cannot tell you. Perhaps I can find out about it in my diaries if I should not have lost just the diary of the year in question. Of my diaries I also lost a good number; I cannot tell you. There is something coming into my mind which I should like to add. That it was just about the time when we had been helping him financially again. And
Tr 59 after his return he - to his regret - had to find out that his representative had done so bad financial business that all our help had been in vain again. That must have been about that time, so far I remember.

Q. Well, do you remember there were submitted on your behalf some correspondence of early 1933 at which time Don Edmundo was living on Asa; so the accident presumably had taken place some years before, isn't that so? A. I really cannot say anymore about it.

Q. But it is a reasonable assumption, is it not, that the accident did take place a few years before 1933, is it not? A. That is probable, yes.

Q. Well now, it is a fact, is it not, that after Don Edmundo returned to the Argentine after his accident he was very sick in Buenos Aires and almost died, is that not so? A. That I learn about for the first time.

Q. And it is a fact, don't you remember that after Don Edmundo's return to Buenos Aires the Doctors discovered that he had a fractured skull, don't you remember that? A. No, that I do not remember at all, otherwise I should have told you so before.

Q. And it is a fact, isn't it, that about 8 or 9 months after Don Edmundo returned to Buenos Aires it was decided that he would have a better chance of recovery at a place like Asa, don't you remember that? A. No, I never learned anything about that.

Q. But it is a fact, is it not, that early 1932 Don Edmundo did return to Europe from Buenos Aires, and did take up residence in Asa?

Tr 60 A. When he returned from Buenos Aires to Europe after I myself and my son had been present in Buenos Aires, when he did actually return because he had got broke at Buenos Aires, and when he stood before nothing, I may perhaps find out the exact year, but I cannot tell this offhand. Then, I believe, after a short stay in Germany we offered him a residence in Asa, not for restoring his health, but for residing there, because he was in the full state of good health by then, and there he remained for years, until we offered him new possibilities of existence in Mexico. That is all written down on record already.

Q. Now I cannot agree with your recollection of those events. Let me suggest a time-schedule to you. In 1929 you went to Buenos Aires with your son Otto. A year or so later Don Edmundo came to Europe. And then he was injured in this automobile accident, and then he returned to Buenos Aires. And after 8 or 9 months he returned to Europe in 1932 when he took up residence in Asa, and then you have stated in 1933 you arranged a new existence for him at Mexico. Is that a reasonable chronology?

By Mr. Mann:

I would suggest since it is now 13.14 p.m. that we leave the petitioner's room and have the translation of the last answer made elsewhere.

A. No, I shall try to fix the respective years, so far it will be possible here where I have no records, no guest-book, no private correspondence nor anything else, which might indicate how the chronology was.

It is true that in 1929 I was in Buenos Aires. It is true that at the time my brother was in his best state of health, and that my sister-in-law was in a state of health which was better than I ever had seen before. When they returned to Germany after that which I did already

tell you, answering one of your questions, that I cannot tell you exactly. On the other hand it is a fact that it was not in 1933 that I gave my brother an opportunity of going to Mexico, and it is a fact that he stayed in Asa for several years. He did go there one or two years after my daughter was married. That is a fact as well. The dates about it may be easily found out. But that year when I gave him an op-

Tr 61 portunity in Mexico to be my representative and trustee again, in order to make him happier again, because he felt very unhappy in Asa, above all because already one or two years before that time his wife had left him, because she could not simply tolerate these lonely surroundings, so very unhappy that we did already think he would divorce his wife. All these are facts- it must have been about 1938, but I cannot indicate the exact year of it, I shall try; that we gave him an opportunity to work for us in Mexico and thereby to get a certain income again, we didn't even bother about it, to that extent I trusted my brother. I must go into greater details about that. He had, of course, my income from the Fincas, the coffee plantations, which amounted to about 30,000 Dollars per year at least. I even remember one year, and then I was particularly glad of, as I rather needed it rather badly that year, that it amounted to 40,000 Dollars which always went to Edwagmij. How much he, out of this income that we did not control, claimed for his livelihood, he needed something after all, and he had to be enabled to appear as a respectable person. I did already say that I would not have taken it amiss that he bought that property in Quernawaca so to say as a consideration for his work. How much beyond that was remitted over to Germany to Edwagmij out of this income of the Fincas that I do not know. Maybe Herr Giesemann can tell you that, my brother is no more alive so far. After the death of my brother not a single Dollar went over to Germany anymore. More I cannot say to all that, at least not for the time being.

Meeting of Counsel, the Witness is not present.

By Mr. Mann:

I have the original of the Certificates which Dr. Berg gave us under date of October 12, 1955 which limited the number of sessions

during which the petitioner could be examined I request that that certificate be marked for identification as petitioner's Exhibit No. 16.

Mr. Albrecht, you asked for any correspondence which passed between the petitioner's attorney Dr. Fabian von Schlabrendorff and Hans-Heinz Stinnes, the petitioner's nephew and the heirs of Annie Fischer. I hand you at this time a copy of the letter dated September 14, 1955 which Dr. v. Schlabrendorff addressed to the attorney for the

Tr 62 parties named, Dr. Karl Gruter.

By Mr. Albrecht:

Thank you, Mr. Mann, I shall offer this letter for inclusion in the record and asked that it be marked Wagenknecht Exhibit No. 34 for identification and that the translation thereof be marked as Wagenknecht Exhibit No. 34a. for identification.

By Mr. Mann

Mr. Albrecht, with respect to your request that we urnish you with a list of Mrs. Stinnes' personal holdings of around 1924 and 1926 and again in 1953 or 1954 I call your attention to the fact that III of Wagenknecht Exhibit for identification No. 21 list Mrs. Stinnes' personal holdings. Moreover, I call your attention to the fact that Wagenknecht Exhibit for identification No. 14 list Mrs. Stinnes' holdings for 1953 In addition we have been able to obtain a list of Mrs Stinnes' recorded personal holdings as of December 31, 1954. Naturally these are the holdings which were declared for German property tax purposes We have made an extensive search and have been unable to find any other records of the nature of that which you have requested.

By Mr. Albrecht:

I don't think it would add anything to place into the record the statement of the witness' securities as of December 31, 1954. I think that for our purposes the list of her investments included in Wagenknecht Exhibit No. 14, will be quite satisfactory to show what her present holdings are. It is to be regretted that apparently we will be unable to make a part of this record a detailed list of the witness' assets fairly contemporaneously with her husband's death in 1924 So that we all could see precisely

what property the witness inherited as the sole heir of her husband.

By Mr. Mann:

Mr. Albrecht, in our counsel meeting at Dusseldorf which took place on October 5, 1955, you placed into the record as Wagenknecht Exhibit No. 20 for identification a copy of a partnership agreement of the Stinnes family firm known as the Hugo Stinnes O.H. You asked at that time whether you were correct in your assumption that that was the latest form of the partnership agreement. Subsequently to that time

Tr 63 I have made inquiry and have determined that there is an internal agreement between the petitioner and her son Otto Stinnes. However, I call your attention to the fact that Hugo Stinnes Jr. has not yet had his name stricken from the partnership agreement in the Commercial Register. I mention this solely for the purpose of making the record clear, and so there could be no possible misunderstanding concerning my answer to this question on page 287 of the Dusseldorf Record.

By Mr. Albrecht:

Well, I am not sure that I comprehend the reason for your statement. When I asked the witness who the present partners of the family firm, known as Hugo Stinnes O.H. were, she replied that the partnership consisted of herself and her son Otto. As I doubted the accuracy of that answer, you will remember that I had placed into the record as Wagenknecht Exhibit No. 17 which is a certificate excerpt from the official German Trade Commercial Register (Handelsregister). This extract certifies as of the date of September 20, 1955 that the membership of the family partnership included as a third partner also the witness' son Hugo. I, therefore, do not understand what document you are referring to if you now state that there is another agreement in fact between the witness and her son Otto as of the date subsequent to May 18, 1931.

By Mr. Mann:

For further clarification I mention merely that I understand that Mrs. Stinnes has given notice to her son Hugo Stinnes jun. and that he contests the validity of that notice, and it is possible that there may be litigation in the German Courts concerning same. That I think may

explain the petitioner's answer to which you made reference

By Mr. Albrecht:

I am afraid that this discussion may not get us anywhere. I believe the witness has testified that she gave notice of termination of partnership to her son Hugo. However, I have been otherwise informed that despite the notice that was given by the witness, it proved to be impossible for her to raise the necessary moneys to pay to the retiring partner his share of the partnership assets, so that upon the expiration of, I believe, the 6 months' notice period, required under the partnership agreement, the partnership could not be terminated. I believe this notice of termination was given some time in 1953 and it proved to be ineffective. I believe I am correct in saying that a similar notice of termination has been given in 1954, and as the 6 months' period provided under the agreement is not yet expired under this last notice, the partnership, as it was constituted in 1931, still exists, and that fact would seem to be borne out as a matter of law by Wagenknecht Exhibit No. 17.

Tr 64

By Mr. Mann:

I agree with you, Mr. Albrecht, that no useful purpose can be served by the two of us pursuing this. Suffice to say that there is a disagreement between the parties.

The cross-examination was resumed by Mr. Albrecht on October 16th 1955 at 10.34 a.m.

Q. Your brother Don Edmundo was very much interested in botanical things, was he not? A. Yes he was.

Q. And he was somewhat of an expert particularly on trees, was he not? A. Not that I know of.

Q. But nevertheless one of the reasons why he stayed in Asa so long was that it presented him with plenty of opportunity to study the trees and vegetation, isn't that true? A. In Asa my brother, as he was otherwise unemployed thoroughly occupied himself with the flowers offered to him by the Swedish flora of Asa, and there he collected a very nice Herbarium

This, however, was not the reason for his lengthy stay in Asa, but he had no other residence at that time.

Tr 65 And he occupied himself with these botanical interests particularly in that period when he resided in Asa to recover his health, is that not so? A. As I did already say he occupied himself with these botanical studies, mainly in order to pass his time. So far as I recollect, his health was in a very good state when he came to Asa.

Q. I think you told us yesterday that you did read at one time one of the vesting orders under which the property which Mrs. Wagenknecht claims was seized, is that right? A. No, I did not read it, so far I know I didn't read anyone.

Q. Then, maybe you told us yesterday that you were told about the vesting orders under which Mrs. Wagenknecht's property was seized, is that correct? A. Yes, I had been told about it.

Q. And you do recollect that you were told that the vesting order said that it was seized because the Attorney General found as a fact that it was the property of yourself, of your son Hugo, of Ernst, of Otto, of Hilda who were at that time enemies of the United States. Do you remember that? A. No, I did not learn about all these details.

Q. Well, hadn't someone told you that the property to which you now claim in the Office of Alien Property was vested because the Attorney General had found to his satisfaction that it was your property and that of your family, and, therefore enemies' property which he was entitled to seize? A. I did not learn about all these details.

Q. Well then, how do you come to claim any property as your own in the United States? A. Mr. Albrecht, my claim of February 1955 was in co-operation i. e. it had been drafted by my attorneys in America. Will you please inquire for possible details with these attorneys.

Tr 66 Q. But you see, Mrs. Stinnes: I would like to find out what you know. What did you tell your American attorneys with respect to what property you claim? A. Before the filing I didn't discuss this claim at all with my American attorneys. They themselves laid it before me

as a correct one. And I have something to add to it. I did only mention they should investigate whether everything they had listed there was really in accordance with the truth.

Q. Well, did you really tell the attorneys what to do or did someone else tell them on your behalf? A. I did already say that I myself had no discussions with the attorneys beforehand.

Q. Well, what I want to know is who told your attorneys that you claimed certain property in America that had been vested and to prepare a claim seeking its return, can you tell us that? A. Firstly it was a well-known fact that the Corporation stock, the Corporation block and the Atlantic Assets block belonged to me that everybody in America knew who had to deal with economic matters. Who the very person was who did the talking to the attorneys that I do not know in detail. I may assume that my son Otto had a talk with them as well.

Q. Well, if it was such a matter of public knowledge that you were the owner of a large block of Hugo Stinnes' shares and of the Atlantic Assets Corporation then why didn't you claim those property rights when you filed your first claim in 1948? A. The very reason for it may have been that in 1948 the release of vested German property by America was still so little settled that it would have been useless to take up any considerable action about it before. Only after the public opinion in America became prevailing that it would be impossible to vest private property, and that it would mean a political impossibility if America cared to develop friendly relations with Germany, to vest German property, on the other hand only then there was a probability to take an action, as we had taken, with success.

Tr 67 I am sorry to say that your answer does not make much sense to me. In 1948 you filed claim for 1500 Atlantic Assets shares and 1050 Hugo Stinnes Corporation shares, and then you waited seven years and you filed a claim for all of the Atlantic Assets shares and over 400,000 of the Hugo Stinnes Corporation shares. How is the Court going to believe that these large blocks of stock were actually your property when you only claimed a fraction of the same when the law permitted you to do so

in 1948? Can you make that plain to us? A. I am afraid I cannot give you a exact explanation as to that. The 1948 claim which contained the diverse modest parts of my property had been still drafted by my son Hugo. Please do ask him why he did draft it like that and not otherwise. The February 1955 claim was, as I did already say, exactly filed as it had been drafted on the advice of my lawyers' firm Messrs. Pehle and Mann and their colleagues.

Q. But you signed both the 1948 and the 1955 claim, didn't you? A. Of course, I did.

Q. And now, Mrs. Stinnes, if you hold for me 10,000 shares of Mulheimer Bergwerksverein, and I ask you to give them back to me and you refuse, it wouldn't make much sense for me to sue you for the return of only 1000 shares, is that not so? A. Well, Mr. Albrecht, I cannot say that you are wrong in that, but nobody could possibly imagine the situation that confronted me at the time in question, i.e. 1948. It would have been senseless to ask my son Hugo why he had done the matter in that way, for I was afraid of his answer I had been hearing from him only too often, namely: Leave all that to me, you cannot understand it anyway. Then one had better keep quiet about it, and at the time he was still enjoying my full confidence, and I told myself he will know why, and, therefore, I told you, Mr. Albrecht: ask him. Later in connection with the 1955 claim the situation was a hundred per cent different. At that time I just asked my son Otto: Did you find out a reliable lawyers' firm at Washington, and he answered: Yes, I did - that and that firm. Besides I knew from the correspondence between him and me who had advised him to approach that firm and that was sufficient to me. From that time on I left everything else to that lawyers' firm at Washington.

Tr 68 Q. Well, how did you know precisely what property that you claimed had actually been vested in the United States? A. That I had heard about occasionally.

Q. Well, who had told you what property that you claimed had been vested in the United States? A. I cannot make a true statement as to that either. I was only told that the Americans did vest everything they

considered my personal property, and that they could only vest in America not in another neutral country which had nothing to do with it and in Germany, of course, that property they vested as well. - -

I should like to add something, so far I remember the press of the whole world had been mentioning it, not only my own property, but generally all German property. There had been no need that anybody else told me about it.

Q. Did anyone at any time submit to you a detailed list of the property which you claim was vested in the United States ? A. I cannot remember that.

Q. Well then, how is it possible for you to file a detailed claim for property which you claim was vested in the United States ? A I did already say that since 1950 I did instruct lawyers to investigate about all these matters, and this investigation was later continued by the lawyers' firm Messrs Pehle and Mann and to that firm I did leave everything else. I cannot possibly give anymore details to that question of yours.

Q What German lawyer did you consult in 1950? A. I do not know whether my German attorney Dr. Schmidt of Dusseldorf had to deal with these matters in detail.

Q Well, if it wasn't Dr. Schmidt who was the first German attorney you consulted with this matter? A That I do not know. I believe
Tr 69 this matter, as it had to deal with the vesting action of the American Government had been treated with American attorneys only.

Q. Well then, do you mean to say that you dealt directly with your American attorneys without the intercession of a German attorney?
A. I cannot give a definite statement, as to that I do not know exactly whether Dr. Schmidt had to deal with it, and I cannot say anything more about it.

Q. But you have also consulted Mr von Schlabrendorff with respect to this matter, haven't you not? A. That is true, it just slipped out of my memory for the moment, and that was later on.

Q And when did you first consult Mr. von Schlabrendorff?

A. I think to remember that I had no personal talk about it with Herr von Schlabrendorff. Mr. von Schlabrendorff had to deal with that matter after I had informed the German authorities about my claim. Before that time, I believe in the year 1950, I got to know Herr von Schlabrendorff in connection with some other matter, which had nothing whatever to do with this claim.

By Mr. Mann:

Let the record show that we recessed at 11.44 a.m. and reconvened after the recess at 12.03 p.m..

By Mr. Stinnes:

To begin with, Mr. Albrecht, I should correct or better clear up my yesterday's statement regarding the proofs which in my opinion are very important to constitute proof of my ownership of Edwagmij; among others I said and you were right in saying that it didn't constitute proof of ownership. That is the agreement made by my sons Otto and Hugo with Clarenore on the occasion when she was paid out on behalf of her inheritance regarding the first half, as there was only the question of 50 - fifty - per cent. That a deposit which Clarenore and my son-in-law
Tr 70 had with Edwagmij would not constitute proof of a title of my ownership. That, of course, is right. But the salient point is following: According to the amount agreed upon my sons had to make an effective payment to the amount agreed upon to fifty per cent, and this payment had not been made by my sons Otto and Hugo, but this payment had been made by Edwagmij. This should be a real proof for the fact that Edwagmij was my own property. In connection with that I should like to refer to a matter which has been discussed between us sometime before. This is the inheritance agreement regarding a fifty per cent share Hugo had made with his sister Hilde. This agreement he made alone. And he too had to pay out this amount agreed upon. But he didn't pay it out himself, but through the partnership (O.H.) i.e. he used the credit of the partnership to that full amount agreed upon. This credit so far I know he never paid back, so far I know it was still fully existent at the time of the German currency reform and thus it became a mere nothing

practically That I have to add, in order to clear up my testimony I deposed regarding this point at that time

Q. I cannot agree with you that the fact that your sons Hugo and Otto caused Edwagmij to make payments to Clarenore proves that you were the owner of Edwagmij. The payments that Edwagmij made to Clarenore, so far as I am concerned, only prove that your sons Hugo and Otto had deposit accounts in Edwagmij, isn't that a reasonable conclusion? A. So far I know my two sons had no deposit accounts with Edwagmij. It was a payment out of the very assets of Edwagmij which was made to my daughter Clarenore and which formed the basis of the deposit account mentioned by myself on which she used to draw in the following years several times

Q. I would like to show you Wagenknecht's Exhibit No. 22 which is a copy of the report that was filed in your name with the Military Government in 1945. Do you remember that report? A No, I do not remember this claim I should say this document It may not matter much, but even my address is given wrongly That address was not my real address, and I cannot make any sense out of it It refers to gold and silver coins, and it doesn't bear my signature either

Tr 71 Q. But it was prepared and signed on your behalf by Herr Unger who had authority to do so A Yes with respect to what was he asked to testify? I couldn't see it from this form I only saw the reference to gold and silver coins that is quite all right as Herr Unger did not know anything about the camouflaged foreign property

Q My only question was Mr Unger prepared and signed this report for you and he had authority to do so? A Yes

Q. Attached to this report is a statement in which you state that among your foreign securities you owned also 1500 shares of Atlantic Assets stock and 1050 shares of Hugo Stinnes Corporation stock. Why didn't this report state that you owned all of the Atlantic Assets shares and over 400,000 Hugo Stinnes Corporation shares? A. That is very simple These are the securities I had also disclosed to the German taxation authorities, and they had been bought later in addition to the

original former securities, viz.400, 000 Corporation stock which I did already own at the time and still do own. I did endeavour so far my financial position allowed me for doing so to buy Corporation shares, debentures and notes currently in the open market. That may have been a part of such securities. At the time I could not control that, as in July 1945 I could not possibly have been at Mulheim, as I was not yet admitted there, as I by the way was still fleeing from the Russians and was at that time staying on a little estate near Bremerhaven. Herr Unger here made a correct statement to the best of his own knowledge and that is sure.

Q. But then this report to the Military authorities did not correctly state what you claim to be your foreign securities, isn't that so? A. I cannot say anything more about it as I did already. To his own knowledge Herr Unger could not make any other statement.

Tr 72 Q. Did you at any time since 1950 direct anyone to file a corrected report to the Military authorities? A. No, I only learned about that later from you.

Q. Well, you certainly have been informed that you had to make a report to the Military authorities to inform them of your foreign property holdings, isn't that true? A. I cannot but say again I do not know anything about it. This letter I got to know as late as now. Moreover at that time my son Hugo was the only person who was dealing with these matters. You had better ask him about it whether he did so or why he did not so.

Q. But I should think that since 1950 when you no longer had anything to do with your son Hugo your new attorney-in-fact, your son Otto would have done something to correct this deceptive and erroneous report filed with the Military authorities, isn't that a reasonable conclusion? A. I believe that until today my son has not the least idea of this report, in the same way as I myself do not know about it. Besides from the very moment when he became my attorney-in-fact he was so overworked that he really did not know where to begin. He had also to look to his Hamburg area which was much extended and which was in the way of development.

From 1945 all of us had to begin a new development, so he really had not the time to bother about old files or old documents. He could not afford the time of doing so. As I said at the beginning already, he hadn't the least idea of this document at all.

Q. You see this report was made by the Hugo Stinnes firm on your behalf, and Mr. Unger signed it as the responsible official of that firm. And there is printed on the declaration the warnings that anyone that gives an untrue or incomplete statement will be punishable under Military Government law, as well as German law. Now I should think that your attorney-in-fact and manager of the firm of Hugo Stinnes would be very much concerned to correct a report such as this so that an employed official of the firm would not carry such a large responsibility. Isn't that correct? A. I think, Mr. Albrecht, in order to explain

Tr 73 that to you I should go to more details. At that time nobody could get hold of me and I myself could not go to Mulheim. I was so to speak exiled and fleeing up there at Bremerhaven. Mulheim was blocked at that time. A few weeks after the surrender my son Hugo was arrested and brought to camp. After having been there for several months the United States Military Government at Dusseldorf, the highest level of that area, wanted to have from him a correct statement about all the conditions of the firm. For that purpose they got the permission to have him released from camp. In day-time he was in the rooms of the Military Government and he was interrogated most severely about all the many details and the warning which had been read to me just now did also apply to these conditions of his; as it has been stated in this document he was also permitted, I believe permitted, to have some talks with Herr Unger about that time. After all this interrogation had been carried by the Military Government in a most severe manner, and it was finished later in the same way. The interrogation was finished after Military Government had been fully satisfied with the statements of my son Hugo. I should suppose that the declaration of this Exhibit were mentioned in it one way or other. More I cannot say about it.

Q. Well, Mrs. Stinnes, you have testified that after fraudulent tax

returns were filed for 30 years you finally decided to gain an easy conscience by advising the German tax authorities of the claim you had filed in America, yet you have also testified that you have at no time since 1950 filed any correction to any of your fraudulent tax returns, and you have now testified that in no times since 1950 you have made any effort to file a correction to this fraudulent returns filed with the Military authorities. I hope you will forgive me saying so, but I cannot understand how you have been able to ease your conscience, can you throw more light on that? A. No. Mr. Albrecht, I am not in the position to give you a more detailed statement about it. Notwithstanding everything and perhaps you would not understand that either - I feel that I have a complete clear conscience. I disclosed to the German taxation authorities everything which I had to disclose, and besides my attorneys in all these matters are my lawyers from 1950 and in them I have full

Tr 74 confidence. More I have not to say..

By Mr. Mann:

Let the record show that Dr. Berg has been present by the last few minutes of this session, and according to my watch it is now 13.13 p.m.

Meeting of Counsel, the witness was not present
on October 17, 1955 at 15 p.m.

By Mr. Mann:

Let the record show that immediately following our last session counsel for all parties met informally with Dr. Berg who advised us that he ordered the deposition to be stopped and gave us a certificate to that effect a copy of which is attached to the record and marked for identification as petitioner's Exhibit No. 17. Thus pursuant to Sec. 2 of the order entered in the United States District Court for the District of Columbia by Judge Youngdahl on October 6th 1955; the questioning of the petitioner has been stopped.

By Mr. Wieferich:

Then it is my understanding that the situation has occurred which

we discussed on Page 20 of this record that is that the Doctor has directed that the questioning of Mrs. Stinnes be stopped, and each party, therefore, necessarily reserved his own rights whatever they may be.

By Mr. Albrecht:

It is probably unnecessary for me to add that I have not completed my cross-examination of the witness, and that I have been prevented from continuing, as in Professor Berg's opinion to do so would be unduly prejudicial to the health of the petitioner. I must, therefore, necessarily reserve all my rights in the premises.

I think it is perhaps desirable also for the record to show that while the deposition in Hamburg has been taken in the presence of a vice-consul of the United States of America neither the reporter nor the interpreter have been members of the staff of the American Consulate General, but have been privately retained on behalf of the petitioner for the purposes of this deposition.

Tr 75 By Mr. Mann:

I think your statement is proper in making the record complete, however, I take it Mr. Albrecht, that by your statement you are not questioning or objecting to the qualifications of either the reporter or the interpreter.

By Mr. Albrecht

That is, of course, correct.

There are only two other things that I would like to say. I have noticed that petitioner's Exhibit No. 10 which is a hand-written letter from the witness to her daughter Clarenore is corrected in several instances in an ink of a different color. Ordinarily I would suggest that in view of that fact it would be desirable to have the original of this exhibit annexed to the deposition, however, as I am not presently certain that anything may turn on these corrections or on the use of an ink of a different colour, it will be agreeable to me to receive your assurance, Mr. Mann, that you will retain possession of the original of petitioner's Exhibit No. 10 in the event that later it might be desirable to give further consideration to the same.

By Mr. Mann:

I will gladly give you the assurance that the original will be available.

By Mr. Albrecht:

I believe that the whole of petitioner's exhibit No. 11 was introduced by you, Mr. Mann, but as the translation thereof which is marked petitioner's Exhibit No. 11a, is of only a portion of the German original, I shall in any event record at this time that insofar as the original may not yet be in evidence I shall want the balance of the same to be in the record. To that end I shall subsequently have a translation of the entire letter prepared and supplied to all counsel.

By Mr. Wieferich:

In view of the physical disability of the witness, I suggest counsel ought to put on the record now the fact that we had mutually agreed to waive the reading of this record back to the witness, the submission to the witness for correction of the same and the signing of the same by the wit-

Tr 76 ness, as provided for by rule 30e of the Federal Rules of Civil Procedure.

By Mr. Mann:

I think the record should be clear that the waiver applies both to the Dusseldorf and Hamburg records. I have discussed the waiver which Mr. Wieferich mentioned with Mrs. Stinnes, and she has instructed me to agree to such a waiver which I hereby do.

By Mr. Albrecht:

Yes, I join in the statement made by Mr. Wieferich and so stipulate. Of course, this stipulation applies to the entire deposition.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1957

No. 279

ELSA W. DE WAGENKNECHT and N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ,

Petitioners—Expected Adverse Parties,

In the matter of the petition of MRS. HUGO STINNES, SR., to perpetuate her own testimony,

Respondent,

HERBERT BROWNELL, JR., Attorney General of the United States, and ATLANTIC ASSETS CORPORATION,

Respondents—Expected Adverse Parties.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Supreme Court of the United States

OCTOBER TERM 1957

No.

ELSA W. DE WAGENKNECHT and N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ,
Petitioners—Expected Adverse Parties.

In the matter of the petition of MRS. HUGO STINNES, SR., to perpetuate her own testimony,
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HERBERT BROWNELL, JR., Attorney General of the United States, and ATLANTIC ASSETS CORPORATION,
Respondents—Expected Adverse Parties.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above proceeding brought under Rule 27 of the Federal Rules of Civil Procedure.

Opinions Below

The informal opinions of the United States District Court for the District of Columbia are unreported. They are included in the court's Memorandum and Order filed

February 23, 1956 (R. 136)* and in its Memorandum and Order filed March 15, 1956 (R. 139). The opinion of the Court of Appeals (R. 573) is reported at 243 F. 2d 413 and printed in the appendix at p. 21 *infra*.

Jurisdiction

The judgment of the Court of Appeals was made and entered on April 18, 1957 (R. 583). The jurisdiction of this court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether the District Court abused its discretion and committed prejudicial error in granting respondent's motion to terminate the perpetuation of her testimony abroad under Rule 27, Federal Rules of Civil Procedure, because:

a) The court failed to give adequate consideration to the extraordinary difficulties that attended the cross-examination of respondent by petitioners' counsel, including the non-cooperative attitude of the witness and her physical and other handicaps which prevented a "searching, complete and advantageous cross-examination" *People* v. *Becker* (1914) 210 N. Y. 274, 104 N. E. 396.

b) The court failed to recognize the significant fact that respondent's testimony being perpetuated under Rule 27, was at the same time her actual testimony as the government's principal witness in the two pending actions brought by petitioners under Section 9 of the Trading with the Enemy Act against the Attorney General, for the return of their vested property. *Vide* pp. 11-12 *infra*.

c) The court's termination order cut off *in limine* the cross-examination of respondent on subjects with respect to which petitioners are entitled to considerable latitude.

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* R. 1-572 correspond to pp. 1-572 of the Joint Appendix filed in the Court of Appeals which annexed R. 573-585 thereto.

and also resulted in undue restriction on petitioners' right to a fair and ample cross examination. *Reilly* v. *Pinkus* (1949) 338 U. S. 269, 70 Sup. Ct. 110, 94 L. Ed. 62; *Hickman* v. *Taylor* (1947) 329 U. S. 495, 67 Sup. Ct. 385, 91 L. Ed. 451; *Alford* v. *United States* (1931) 282 U. S. 687, 51 Sup. Ct. 218, 75 L. Ed. 624.

d) The conflicting claims of respondent and petitioners relate to substantial property interests vested by the Attorney General, valued at between 15 and 20 million dollars.

e) The demonstrable errors contained in the court's orders of February 23 and March 15, 1956 patently do not support the court's statement in its memorandum and order of February 23, 1956 that "the records and briefs in this case have been examined with care".

2. Whether under the unusual circumstances surrounding the taking of this deposition, a proper exercise of the court's discretion required it as a matter of equity, to defer its ruling terminating the deposition until the lapse of reasonable time disclosed whether respondent was able to resume her testimony.

Federal Rules Involved

The pertinent portions of Rules 26, 27 and 30, Federal Rules of Civil Procedure, are printed in the appendix at pp. 29-33 *infra*.

Statement

The petition seeks to review the judgment of the Court of Appeals which affirmed the order of the District Court terminating the taking of respondent's deposition.

This proceeding under Rule 27 F. R. C. P. was brought by respondent, Mrs. Hugo Stinnes, Sr., a German national and non-resident, for an order authorizing her to perpetuate her own testimony.

In her petition (R. 1) respondent states that she is over 82 years old and in frail health, that petitioners herein, Elsa W. de Wagenknecht (hereinafter referred to as "Mrs. Wagenknecht"), and N. V. Edmund Wagenknecht's Handel Maatschappij (hereinafter referred to as "the Dutch Corporation"), and also others, at various times had filed notices of claim with the Office of Alien Property, Department of Justice, for the return of property vested by the Attorney General under the authority of the Trading with the Enemy Act, and that on February 8, 1955, respondent also had filed a notice of claim with respect to substantially all of the property previously claimed by Mrs. Wagenknecht and the Dutch Corporation.

The value of this property is estimated at between 15 and 20 million dollars (R. 115). Petitioners also had filed suits for the return of this property, as permitted by Section 9 of the Trading with the Enemy Act (R. 92). These actions are now pending in the District Court.

Mrs. Stinnes concedes that she is not eligible for a return of any of said property, and that she is not qualified to bring an action under Section 9 of the Trading with the Enemy Act against the Attorney General (R. 2); but respondent states that if the Congress should enact legislation returning enemy property to its former owners, and if the Attorney General should return the vested property claimed by her to petitioners, respondent expects to bring one or more actions against Mrs. Wagenknecht, who is a national and resident of Mexico, the Dutch Corporation, the Attorney General of the United States, and Atlantic Assets Corporation, a Delaware corporation, as expected adverse parties.

Respondent's stated desire for perpetuating her testimony is to establish (a) that she is the widow and residuary legatee of the late Hugo Stinnes, Sr., and (b) that all or substantially all of the vested properties were included in the residuary estate of said Hugo Stinnes, Sr., or were other-

wise beneficially owned by her at the time of their vesting (R. 4).

Respondent, who is a resident of Muelheim, Germany, declined to perpetuate her testimony in Washington and desired instead to depose in Germany. Upon consent, the District Court on July 11, 1955 (R. 8) granted respondent's petition on terms.

The taking of the deposition commenced on August 30, 1955 in Duesseldorf. It was adjourned on September 27 to enable respondent to receive medical treatment in Hamburg by her physician, who certifies that Mrs. Stinnes has been in his continuous care for a duodenal ulcer condition since 1929 (R. 45). The deposition was resumed on October 11, and on October 16 it was stopped by respondent's physician. At that time petitioners' counsel had not completed his cross-examination of respondent.

In consideration of her age and the fact that she is a chronic sufferer from ulcers, when respondent testified, she did so at intermittent sessions* of two and one-half hours including the time taken by a recess. The examination of the witness herself took about two hours, although the time of the effective examination of respondent by counsel at each session was cut in half by the fact that every question had to be translated into German and every answer had to be translated into English.

On direct respondent testified on August 30, 31, September 2 and most of September 3. She was cross-examined on behalf of the Attorney General on September 3 and through most of September 6. Petitioners' counsel then cross-examined the witness intermittently in Duesseldorf until September 27, and later in Hamburg from October 11 to October 16. Thus the witness' cross-examination took place

*Respondent deposed in Duesseldorf at 19 short sessions, on August 30, 31, September 2, 3 (Saturday), 5 (Labor Day), 6, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 26 and 27; and in Hamburg at 6 equally short sessions, on October 11, 12 (Columbus Day), 13, 14, 15 (Saturday) and 16 (Sunday).

at 19 brief sessions over a period of 27 days, during which the effective cross-examination of petitioners' counsel was the equivalent of somewhat less than 19 hours (R. 89).

Upon respondent's motion under Rule 30(d)* the District Court, by its order of February 23, 1956 directed that the taking of the deposition be terminated. The order makes no reference to Rule 30(d) which provides for termination "upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party"; and the order is bare of any finding of bad faith or that the cross-examination was being conducted "in such manner" as "unreasonably" to oppress.

On motion of the Attorney General, the District Court's order of February 23, 1956 was resettled and modified on March 15, 1956 to eliminate an erroneous determination by the court patently prejudicial to him.

Petitioners appealed from the order of February 23, 1956 as resettled, by invoking the jurisdiction of the Court of Appeals under the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C. § 1291, and under Rules 54(a) and 73 F. R. C. P.

The Court of Appeals affirmed, ruling that the District Court had not abused its discretion in terminating the taking of the deposition, and that there had been ample opportunity to cross-examine respondent.

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* Rule 30 does not apply to a proceeding under Rule 27. Of the rules included in Part V of the F. R. C. P. entitled "Depositions and Discovery", only Rules 34 and 35 have been made applicable to Rule 27 by the 1946 amendment to the Rules. The Court of Appeals (R. 573) seems to hold the contrary view, but the two cases cited in support relate to depositions under Rule 26. *Vide* *Schwartz* v. *Broadcast Music Inc.*, (S. D. N. Y. 1954) 16 F. R. D. 31; *Laverett* v. *Continental Briar Pipe Co.*, (E. D. N. Y. 1938) 25 F. Supp. 80. Rule 26 (b) provides that orders under Rule 30(b) and (d) apply to that Rule. There is no reference at all to Rule 30 in Rule 27. Moreover, the language of Rule 30(b) and (d) restricts its application to a deposition taken in a *pending action*, i.e. under Rule 26.

Reasons for Granting the Writ

I.

This petition should be granted because petitioners have not had "fair and ample opportunity" to cross-examine respondent. The judgment appealed from must stand or fall upon the correctness of the court's finding that petitioners have had that opportunity. But such finding to have validity, must be judged not according to the standard of discretion exercised by a trial court concerned with problem of litigation falling under Rule 26. Its correctness can be determined only in the sound discretion of a court that has given proper consideration to the facts and circumstances under which the deposition was taken in this particular perpetuation proceeding under Rule 27. (*Vide* pp. 16-17 *infra* for statement of differences between a deposition taken under Rule 26 and testimony perpetuated under Rule 27). This determination can be made only from an examination of the deposition itself against the background of the circumstances surrounding its taking.

Respondent herself initiated this proceeding in order to perpetuate her own testimony. The rule of this court is that greater latitude is permitted in the cross-examination of a party who takes the stand than in the case of other witnesses. *Rea* v. *Missouri* (1873), 84 U. S. 532, 21 L. Ed. 707; *Alderman* v. *U. S.* (CA-5, 1929), 31 F. 2d 499, cert. den. 279 U. S. 869, 49 Sup. Ct. 513, 73 L. Ed. 1008. While the extent of cross-examination is always within the sound discretion of the court, it is nevertheless subject to the rule that a party "should have had an opportunity for a searching, complete and advantageous cross-examination" *People* v. *Becker*, *supra*. This opportunity petitioners have not had.

The Court of Appeals cited "the advanced age of the witness, the delicate state of her health and the probable adverse effect upon her health of further cross-examination" as making proper the termination of her deposition.

But the facts of respondent's age and state of health may not arbitrarily be cited as grounds for denying or limiting petitioners' right to cross-examination. Age and health are facts that must be considered together with all other facts, in determining whether petitioners' counsel has had ample opportunity to complete the arduous task of cross-examining this respondent that confronted him abroad.

The state of respondent's health was fully known to all parties at the time her petition was filed below (R. 9). Her ulcer condition was not brought about by her deposition, although it was undoubtedly aggravated by the strain and excitement of testifying.* When the deposition was stopped in October 1955, respondent's physician, in reply to counsel's inquiry, was unable to estimate when the examination of the witness might be resumed (R. 73). There is no warrant for concluding, without further inquiry, that a physician would not now certify—almost two years later—that the witness may with safety complete her deposition.** *Cf.* petitioners' suggestion on this point to the District Court (R. 104).

Under the unusual circumstances surrounding the taking of this deposition, a proper exercise of the court's discretion required it as a matter of equity, to defer its ruling terminating the deposition until the lapse of a reasonable time disclosed whether respondent was able to resume her testimony. Such deferment would adequately and equitably have resolved this question, and would resolve it even at this date, since such deferment would not be prejudicial to any party to this proceeding.

A cardinal fact in the consideration of the problem is that of necessity respondent will be the chief witness for

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* When respondent first moved on September 26, 1955 to terminate her deposition, her physical condition was not a motivating factor and was not referred to in the moving affidavit (R. 15-33).

** There was some evidence before the court bearing on the degree of respondent's recovery as early as December 1955 (R. 128). Moreover, for the past 28 years respondent has made periodic recoveries (R. 45).

herself in any future action to be brought, and that her testimony already has made her the principal defense witness for the Attorney General in the pending actions brought against him by Mrs. Wagenknecht. The present occasion may be, and probably is, the only opportunity that petitioners will have to confront the witness. It is of utmost importance that their right to cross-examine her is not limited, since her testimony is general and concerns issues of great import and valuable property interests.

The transcript of respondent's testimony confirms that the witness was not cooperative under cross-examination; and that she gave lengthy recitals as her answers and volunteered long statements before a question could be asked (*vide* e.g. R. 508). The transcript records many answers that were one-half page or more in length. Some were one and one-half and two pages long (*vide* e.g. R. 508-9, 509-10, 547, 548, 550-1, 557-8). Since respondent deposed in German, all this added greatly to the burden of translating her answers into English* and reduced the time available for cross-examination. Throughout her deposition, respondent required the use of a hearing aid. The combination of her impaired hearing, her frequent inability to hear the question or to comprehend the same when her mind wandered while under the influence of sedatives (R. 71), her failure to testify in reasonably brief form, and the necessity for translating everything consumed a substantial part of the brief hearing time.**

To summarize, although respondent testified for about two hours each session, it may fairly be submitted that the effective cross-examination was equivalent to only one hour's questioning of an average witness, and even less. The cross-examination was not continuous and, of necessity,

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* *Vide* R. 549 where one answer required 30 minutes to translate. Other translations were equally time consuming (R. 508-9, 509-10, 550-1, 557-8).

** *Cf.* statement made by petitioners' counsel on the record (R. 370).

time was spent in picking up the threads of examination from the previous session. This lack of continuity reduced effective cross-examination to less than 19 hours in the course of 19 sessions in 27 days, during which petitioners' counsel unsuccessfully sought to complete a "searching, complete and advantageous cross-examination".

Respondent's deposition concerns itself with the basic issue of who is possessed of the right to property interests, worth between 15 and 20 million dollars (R. 90), vested by the Attorney General under the Trading with the Enemy Act. Mrs. Wagenknecht, as successor of her deceased husband Don Edmundo Wagenknecht, and the Dutch Corporation had already filed claims for the return of their vested property when respondent, who earlier in 1948 had filed a claim (R. 500) to a few items of property not disputed by petitioners, on February 8, 1955 for the first time filed another claim (R. 296) that included substantially all of petitioners' property.

Upon direct examination respondent asserted that during the lifetime of her husband, who died in 1924, a "furtive scheme" was hatched to camouflage her husband's assets outside of Germany so that his ownership of them would not be apparent. After the death of her husband, respondent claimed that she carried out and maintained this scheme to camouflage the foreign assets. She claimed that certain persons and corporations were "straw men" or "trustees" who held the alleged camouflaged property for her husband, and later for her as his heir. It is substantially this alleged camouflaged foreign property for which petitioners and respondent have filed claims. Among the alleged "trustees" are named Don Edmundo Wagenknecht, the Dutch Corporation, and later, Mrs. Wagenknecht herself as successor in interest to Don Edmundo.

No effort was made by the witness on direct to produce any documentary proof in the form of an inventory or a schedule of assets of her husband's estate inherited by her, or otherwise to substantiate her unsupported story.

It is simply not credible that Mrs. Stinnes' records do not include a list of such assets. It is a matter of public knowledge that Hugo Stinnes, Sr., was a leading German industrialist who had created an industrial empire. A record of his holdings and possessions must be available to his widow or those authorized to act for her. It is also not credible that a business man of the background and experience of the late Hugo Stinnes, and also respondent, should not have taken back from alleged "trustees" some written admission of their trust.

The last will of her husband (R. 258) established respondent as his heir; but as no written proof was offered to show what property she had inherited, the burden of developing and proving the facts for which the deposition was being taken (R. 4) would seem to have been placed with premeditation on petitioners. Having been placed in that position, petitioners' counsel had no choice but to assume the time-consuming burden of attempting to develop the facts by means of documentary evidence under the witness' control but which she had not offered. To this end, petitioners repeatedly demanded the production of documents which it was believed would help to establish the true facts bearing on the principal issues of the deposition, and to expedite the taking of the same. As none of this relevant and important documentation was produced, petitioners have not yet had the opportunity to cross-examine the witness on the basis of the same.

Equally if not more important is the fact the respondent's testimony was in direct conflict with the prior depositions of (1) her son, Hugo Stinnes, Jr., who as his mother's attorney-in-fact had managed her affairs and the family partnership and business from the death of his father until 1950; (2) her son, Otto, who succeeded his brother Hugo in 1950 and still is his mother's attorney-in-fact and manager of the family partnership, and (3) Wilhelm Unger, the long-time director of finance of the Stinnes family partnership and business enterprises. These depositions were taken in 1953 and 1954 on behalf of peti-

tioners and the Attorney General in actions (*Civil Action No. 1734-52* and *Civil Action No. 4920-52* pending in the District Court) brought by petitioners against the Attorney General under the Trading with the Enemy Act, for the return of their vested property now belatedly also claimed by respondent (R. 92, 330-1).

It is vital to petitioners that it be recognized—which the court below failed to do—that respondent's testimony perpetuated under Rule 27 is at the same time her actual testimony as the principal defense witness for the government in these actions and that respondent's deposition is available to the Attorney General upon the trial of these actions (Rule 27(a)4). Under these circumstances, petitioners must be accorded wide latitude to conduct a "searching, complete and advantageous" cross-examination to test respondent's story against all available written evidence.

The testimony of respondent on direct is in effect a fantastic confession of alleged wrong-doing (R. 297-8) on the part of herself and her deceased husband. She testified that in 1950 she decided to relieve her conscience of her wrong-doing that extended over thirty years, during which she filed fraudulent tax returns with the German authorities pursuant to the "furtive scheme" to camouflage the true ownership of her husband's property. This extraordinary confession has been perpetuated with nothing to support the oral statement of an elderly woman, all of whose affairs and property since the death of her husband in 1924, have been controlled and managed by her son Hugo (until 1950) and her son Otto (after 1950) whose testimony conflicts with their mother's (R. 92).

Respondent has argued that as she has confessed her misdeeds, it was improper to question her with respect to her fraudulent income tax and property tax declarations. Petitioners do not concede that respondent's tax declarations are consistent with the alleged "furtive scheme" to camouflage; and the fact that she admits that her returns

are false and fraudulent, does not exclude the possibility that they may be highly relevant in relation to other facts, to show that her story is without foundation, and to destroy or throw doubt on her credibility.

On direct respondent testified further that her brother Don Edmundo Wagenknecht, Mrs. Wagenknecht's deceased husband, was without means, a bankrupt and living on her charity allegedly at the time when some of the property in question was acquired. In support of that testimony she testified (R. 288) that their father (Consul Wagenknecht), who died in 1922, thought so little of his son's business ability that he refused to appoint him executor of his substantial estate (*cf.* R. 430-2, 405) and appointed instead his brother-in-law, Hugo Stinnes, Sr., and also respondent as her husband's successor. Both on direct and cross-examination Mrs. Stinnes emphatically repeated that testimony (R. 411). But later respondent admitted (R. 420) that her prior testimony was untrue and that her brother had been appointed co-executor of his father's estate together with her husband.

Cross-examination to obtain a similar retraction of respondent's unsupported statements that her brother at no time was possessed of substantial means, has not yet succeeded. It is a vital issue for petitioners to establish that Don Edmundo was a person of substance and means as the owner of the property interests vested by the Attorney General.

It has been charged that petitioners' oral requests for documentary proof were improper, since application should have been made to the District Court under Rule 34. Despite her objections, some documents were produced by respondent. Obviously, petitioners' demands made abroad for the production of documents were actually in the interest of expediting the deposition.

A substantial bar to the cross-examination of respondent on the important issues that may have to be met, was

created by her failure or refusal to produce such important documentary evidence as the following:

(1) The inventory of the estate of Hugo Stinnes, Sr. (*vide* petitioner's final demand therefor at R. 535-6), or any other document listing the property inherited by respondent, such as e.g. the records of the arbitration court that determined the amount to be paid to Edmund Stinnes in 1926 as his share of his father's estate (R. 342); a statement of respondent's personal property holdings included in her capital account in the family partnership (R. 347); and the property tax declarations and reports of respondent from 1926 to the present and her income tax declarations and reports for the three specified years demanded (R. 347).

According to German practice, a taxpayer files a tax declaration (*Steuererklärung*), and the tax authorities, after auditing the same, mail to the taxpayer a return (*Steuerbescheid*) which fixes the amount of the tax. In the case of more substantial taxpayers like Mrs. Stinnes there is included with a property tax declaration, an annex giving the details of property owned; and an income tax declaration always includes a statement of the property from which income has been received (R. 461-2). Upon demand respondent produced numerous tax declarations and reports, but in substantially all of these cases the important annexes itemizing her property and sources of income were missing.

(2) Respondent's last will and testament. At the end of the Hamburg deposition, her attorney announced (R. 537) that a copy of the will *in German* had been handed "without comment" to the American Consul in Duesseldorf, who in his presence had sealed the same in an envelope which he had agreed to attach to the original deposition.

(3) Copies of all correspondence and enclosures between respondent and her son Otto as her attorney-in-fact

on the one part, and the German authorities on the other part, to whom the witness testified, notice of her alleged fraudulent tax returns had been given,—but not until the taking of her deposition had commenced (R. 475, 482). Respondent testified that it was in 1950 that the witness decided to relieve her conscience and to make a clean breast of her alleged fraud extending over thirty years. It is important that full opportunity be accorded petitioners to examine the witness closely to test the truth of her testimony and to determine the reasons and circumstances that delayed for five years her alleged confession to the German authorities.

(4) All written proof of respondent's alleged ownership of camouflaged foreign property. Repeated demands made for the production of written proof to support her all-encompassing claim evoked completely evasive answers. She testified:

> "If proofs should be missing today, then I shall have them at my disposal whenever they may be required" (R. 488).
>
> "I shall endeavor to present proofs within such time, but I doubt that they will be available in such a short time" (R. 490).

And the following curious statement was volunteered by her counsel (R. 538):

> "The petitioner has responded to your blanket request for the production of all proofs of ownership which she may have of her camouflaged foreign property."

This statement to the contrary notwithstanding, not even one document has been produced to corroborate the witness' claim that she is the owner of the property for which petitioners have filed claims and instituted actions that are now pending in the District Court.

II.

The decision below should be reviewed because there has been no recognition of the essentially different character of a deposition taken for the purpose of perpetuating testimony under Rule 27. The Court of Appeals said that the exercise of the lower court's discretion in terminating the deposition "is akin to the trial court's discretion in limiting the right to cross-examination at trial". The Court of Appeals, therefore, makes no distinction between the problems inherent in a deposition under Rule 27, and the every-day problems of a trial court, including those met upon a deposition taken in pending litigation, i.e. under Rule 26. That distinction is recognized in the Federal Rules where the two situations are treated separately. Rule 27 governs depositions *before action* and Rule 26 deals with depositions *pending action*. Petitioners know of no decided cases in which that distinction is discussed and in which the right of cross-examination under Rule 27 has been given consideration.

In litigation the parties are confronted with issues that are the subject of proof upon the trial of the *pending action*. A trial court's ruling with respect to the extent of an examination by counsel is, therefore, with reference to known issues established by the pleadings.

On the other hand, a deposition under Rule 27 is, as the rule states, a *perpetuation proceeding before action*. There are no litigants since no suit is pending. There are no pleadings, and the expected adverse parties do not know what issues they may be compelled to meet, possibly not until many years later. The perpetuation of testimony is for the purpose of a possible future suit against parties against whom petitioner has alleged she "expects" to bring suit.

Yet there is no requirement under Rule 27 that an action must be brought; and there is no certainty that a petitioner

actually intends to or will institute suit. Hence a court may judicially recognize that a perpetuation proceeding represents in effect the threat of an action that may never be brought. The lower court should have ensured, in the circumstances of the instant proceeding, that the expected adverse parties have full opportunity to ferret out whatever hidden motives exist for the belated claims asserted by respondent against petitioners' vested property. Lacking knowledge of the issues to be met upon trial of an action not yet brought, expected adverse parties must necessarily be accorded wider latitude and greater liberality upon cross-examination than is required by a party in a pending action.*

III.

A further reason for granting the writ is that the orders of the District Court appealed from convincingly demonstrate prejudicial errors which may have had the effect of depriving petitioners of their day in court. These errors contrast sharply with and therefore negate the District Court's preamble in its memorandum and order of February 23 that "the records and briefs in this case have been examined with care" (R. 137).

Respondent's motion before the court had a two-fold purpose: (a) to terminate the deposition, and (b) to determine the fee and disbursements to be paid by respondent to petitioners' counsel.

The errors committed by the court comprise: (1) the court's failure to recognize the nature of a proceeding under Rule 27, by assuming that an action had already

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* *Cf.* 4 Moore, Federal Practice (2d ed.) Sect. 27.09 favors a more liberal standard of materiality and competency since the issues in a perpetuation proceeding are less well defined; citing with approval *Arizona* v. *California* (1934), 292 U. S. 341, 360, 54 Sup. Ct. 735, 78 L. Ed. 1298.

been brought by respondent against petitioners (R. 138, 139); (2) the court's erroneous assumption that petitioners were the moving parties upon respondent's motion to determine the amount of fee (R. 136); and (3) in terminating the deposition, the court's false assumption that respondent had contended that part of the fee of petitioners' counsel "should be carried by the Government" (R. 137). On the Attorney General's motion for resettlement and modification of this prejudicial order, the court corrected the same to read that "the Attorney General is in no way finally liable for the expenses surrounding the taking of the deposition" (R. 139).

Upon the Attorney General's motion petitioner pointed out that since this was a Rule 27 proceeding and there was, therefore, no action pending between the parties, it was pointless to defer the determination of the fee of petitioners' counsel by saying that this "may be determined from the hearing subsequent to trial (sic)" (R. 138). Nevertheless, the court's order of March 15 adhered to its earlier determination and ordered that the amount of counsel's fee "be fixed either subsequent to trial (sic) or subsequent to the taking of testimony in a hearing to be held upon the filing of an appropriate motion" (R. 139).

There also was no logic in requiring "an appropriate motion" to be brought*, since the very decision of the court was on respondent's motion then before it for the determination of counsel's fee as well as the termination of the deposition.

Petitioners have been forced to the reluctant conclusion that the records and briefs have not been examined with care by the District Court. They appealed from these orders to secure that consideration of the facts and circumstances of the taking of the deposition which to all appearances was

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* Another motion was brought by petitioners and the court fixed their counsel's fee at $22,800 and allowed disbursements of $3,459.87. On appeal the Court of Appeals affirmed (R. 573).

denied to them below, and which they submit fairly demonstrate prejudicial error and a substantial denial of justice. The same considerations govern the submission of petitioners' instant petition for a writ of certiorari to the Court of Appeals.

Conclusion

For the reasons set forth above, it is petitioners' respectful submission that this petition for a writ of certiorari should be granted.

July 15, 1957

RALPH G. ALBRECHT,
Counsel for Petitioners.

GERALD J. MCMAHON,
HENRY F. BUTLER,
JOHN GEYER TAUSIG,
Of Counsel.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Decided April 18, 1957

Before PRETTYMAN, FAHY and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge:* These cases involve appeals from orders of the District Court entered February 23, 1956 (as amended by order of March 15, 1956) and April 30, 1956. Although the record pertaining to these cases is somewhat lengthy, the facts necessary to a determination of these appeals may be briefly summarized.

On May 13, 1955, Mrs. Hugo Stinnes, Sr., a German national and a non-resident of the District of Columbia, filed her petition for an order pursuant to Rule 27 (a) Fed. R. Civ. P. authorizing the taking of her deposition upon oral examination, for the purpose of perpetuating her testimony in support of her claim to certain property presently vested by the Attorney General under the Trading with the Enemy Act.[1]

After certain intermediate proceedings the District Court, under date of June 13, 1955, entered an order, which, among other things, appointed Ralph G. Albrecht as attorney to represent Elsa Wichtendahl de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, a Dutch corporation (two of the expected adverse parties within the meaning of Rule 27 (a) (2) Fed. R. Civ. P.)[2]

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[1] 40 STAT. 411 (1917), 50 App. U. S. C. §§ 1-39 (1952).

[2] The portion of the order appointing Mr. Albrecht reads as follows: "3. Subject to the provisions of Rule 4(b) of the Rules of this Court, Ralph G. Albrecht, Esq., of 501 Fifth Avenue, New York, New York, is hereby appointed as attorneys to represent said Elsa Wichtendahl de Wagenknecht and said N. V. Edmund Wagenknecht's Handelmaatschappij herein within the meaning of Rule 27 (a) (2) of the Federal Rules of Civil Procedure."

Mr. Albrecht had previously represented these parties in connection with certain matters but he testified that he was without authority to accept service on behalf of either of the above named expected adverse parties.

Thereafter, and on July 11, 1955, the District Court entered a further order, consented to by petitioner and all expected adverse parties named in the petition, directing that the deposition be taken in Dusseldorf, Germany, to commence August 15, 1955, and to continue from day to day until completed "provided, however, that in view of petitioner's age and the state of her health, the taking of her deposition may be recessed from time to time as may appear necessary or appropriate to said attorneys; and petitioner is hereby directed to appear at such place and at such time and times and give her deposition . . ." This consent order of July 11, 1955, also provided that petitioner should pay to Ralph G. Albrecht, attorney for the two above named expected adverse parties, a reasonable attorney's fee for his services in connection with the taking of the deposition and all reasonable expenses incurred by him in travel between New York and Dusseldorf and return, and for board and lodging in Dusseldorf incurred in connection with the taking of the deposition. It was further provided that the court would determine the amount of fees and expenses upon completion of the taking of petitioner's deposition.

The taking of the deposition was postponed until August 30, 1955. Petitioner's direct testimony was taken in Germany on August 30, 31, September 2 and part of September 3. Her cross-examination by counsel for the Attorney General[3] commenced September 3 and continued on September 5 and part of September 6. Appellants' counsel then examined the witness on September 6 and

[3] The Attorney General, as successor to the authority, rights, privileges, duties and functions of the Office of Alien Property Custodian, and Atlantic Assets Corporation (represented by the Attorney General) were also named as expected adverse parties.

intermittently on nineteen days thereafter. The record discloses that, at the time of the filing of the petition, petitioner was eighty-two years of age, in bad health, being a chronic sufferer from duodenal ulcers, and, consequently, the daily sessions for the taking of testimony aggregated about two and one-half hours per day. The deposition was taken through an interpreter.

On September 27, 1955, after the cross-examination had lasted thirteen days and part of another, petitioner was ordered by her doctor, because of the adverse effect which the examination was having on her health, to cease testifying and return to the hospital at Hamburg for examination by a specialist who had treated her for many years.

Petitioner, on September 26, 1955, filed a motion in the District Court for an order directing the officer conducting the examination "to cease forthwith from taking said deposition or to cease from taking said deposition after the passage of such further time as may appear reasonable to the Court in the premises, upon the ground that cross-examination of petitioner by said Ralph G. Albrecht, Esq. is being conducted in such manner as unreasonably to oppress the petitioner." At the hearing on the motion, a certificate was presented from her physician since 1929 stating that "to continue the examinations in the manner they have been apparently held" would be dangerous to Mrs. Stinnes' health and life, and that continuance under medical supervision and for a few other sessions would be preferable to postponing the examination to some date in the future. The District Court entered an order dated October 6, 1955, providing in part as follows:

> "(2) The taking of the deposition of the petitioner upon oral examination be resumed at the Universitats-Krankenhaus Eppendorf, Hamburg, Federal Republic of Germany, as promptly after the entry of this Order as arrangements can be made therefor and petitioner's health permits, and shall continue there to be taken until counsel shall complete the same or until to continue to take the same would, in

the written opinion of petitioner's physician be unduly prejudicial to the health of petitioner, whichever occurs first;

"(3) Unless petitioner's physician shall advise the attorneys participating in the taking of petitioner's deposition that longer sessions will not be unduly prejudicial to her health, petitioner's deposition upon oral examination as hereinabove provided shall be taken as heretofore during daily sessions of not more than two and one-half hours each, including a recess of thirty minutes, provided, however, that in view of petitioner's age and the state of her health, the same may be recessed briefly from time to time as may appear necessary or appropriate to the attorneys participating in the taking of petitioner's deposition;

"(4) Should petitioner's physician advise the attorneys participating in the taking of petitioner's deposition that in his opinion the taking of her deposition can continue only for a specified number of additional daily sessions without the same becoming unduly prejudicial to petitioner's health, such attorneys shall thereupon undertake to reach an agreement effecting an equitable allocation among them of the time so specified by petitioner's physician, for her further examination by each of them;

"(5) The Court reserves jurisdiction, after notice to all parties, to enter such Order on petitioner's said motion as may be appropriate in the event that prior to the completion by counsel of the taking of petitioner's deposition, petitioner's physician shall give it as his written opinion that to continue to take her deposition would be unduly prejudicial to petitioner's health. . . ."

The deposition was continued at Mrs. Stinnes' hospital room on October 11, 1955, Mrs. Stinnes being attended by her physician, who, on October 12, 1955, certified that he had attended the October 11 and 12 sessions and stated:

". . . the questioning is detrimental to the patient's health, and, if continued for too long a time, the stress caused by it could result in an urgent complication of the ulcer (perforation or hemorrhage). The perfora-

> tion would endanger Mrs. Stinnes' life seriously because it would include a surgical intervention. In an age of nearly 83 years the risks of such a progeciure are obvious, and equally in the case of hemorrhaige. So I have given Mrs. Stinnes sedatives to relieve the stress, but notwithstanding their effect the examination continues to threaten her health."

He then concluded that, in his opinion, five daily and consecutive sessions of actual questioning of not more than two hours would be the maximum without seriously endangering the health and possibly the life of Mrs. Stinnes. Accordingly, the cross-examination continued October 13, 14, 15 and 16, on which date her deposition was suspended on the order of her physician.

By notice filed November 28, 1955, the motion of September 26, 1955, for an order terminating the taking of the deposition was calendared. On November 28, 1955, petitioner applied for an order determining the amount to be allowed Mr. Albrecht for travel and other expenses and the amount, if any, of the attorney's fees to be paid by petitioner. On February 23, 1956, the court entered its order, holding, among other things:

> "Believing that the examining parties have had fair and ample opportunity to go into the matters in controversy despite difficult circumstances, and being of the opinion that further cross examination of petitioner would be oppressive, the deposition will be terminated by the Court. If, as a consequence, the deposition is rendered incomplete, such fact may be called to the attention of the Court when it is offered in evidence, so that it may be evaluated properly."[4]

The expected adverse parties, Elsa W. de Wagenknecht and N. V. Edmund Wagenknecht's Handel Maatschappij, duly appealed. This appeal is No. 13,457 in this court.

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[4] The court entered an amending order, dated March 15, 1956, which did not affect so much of the order of February 23, 1956, as terminated the taking of the deposition.

On the question of Mr. Albrecht's fees and expenses, he requested a fee in the amount of $30,400.00, expenses in the amount of $3,459.87, and an allowance of $1,698.70 for fees and disbursements of his Washington associate. A hearing on the question of fees and expenses was held before a judge of the District Court other than the judge who ordered termination of the deposition and, at the conclusion of the hearing, Mr. Albrecht was awarded a fee of $22,800.00 and expenses of $3,459.87. The claim for his Washington associate was disallowed. This order was dated April 30, 1956, and from this order Mrs. Stinnes appealed. Mr. Albrecht did not cross-appeal this order. The appeal relating to Mr. Albrecht's fees and expenses is No. 13,458 in this court.

Appeal No. 13,457

Section 30(d) of the Federal Rules of Civil Procedure provides as follows:

> "*Motion to Terminate or Limit Examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable."

Consistently with this rule, the District Court, on examination of the record, concluded that the examining parties had had fair and ample opportunity to go into the questions in controversy and found that further cross-examination of petitioner would be oppressive.

The matter of limiting or terminating the taking of a deposition is in the sound discretion of the court. *United States ex rel. Edelstein* v. *Brussell Sewing Mach. Co.*, 3 F. R. D. 87 (S. D. N. Y. 1943);[5] *Walsh* v. *Pullman Co.*, 10 F. R. D. 77 (S. D. N. Y. 1948); 2 Moore, Federal Practice & Procedure 2575.[6] The exercise of this discretion is akin to the trial court's discretion in limiting the right to cross-examination at trial, the exercise of this discretion being ground for reversal only when the trial judge has abused the discretion allowed him. See *Rea* v. *Missouri*, 84 U. S. 532 (1873); *Kight* v. *Metropolitan Railroad Co.*, 21 App. D. C. 494 (1903); *Tuchtman* v. *Connelly*, 106 F. 2d 501 (6th Cir. 1939).

Under the facts in this record we are convinced there was no abuse of discretion when the trial court granted the motion terminating the witness's deposition. We agree that greater latitude is permitted in the cross-examination of a party than might be the case with non-party witnesses. *Rea* v. *Missouri*, *supra*; *Jansson* v. *Larsson*, 30 App. D. C. 203 (1907); *Alderman* v. *United States*, 31 F. 2d 499 (5th Cir.), *cert. denied*, 279 U. S. 869 (1929). But, even with this in mind, we can find no error in granting the order here attacked. Those cases which require a movant under Rule 30(d) to make a clear showing of annoyance, embarrass-

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[5] In this case the court stated: "The power of the court to prevent abuse of its process is very broad, before the examination under Rule 30 (b) and during the course of the examination, Rule 30 (d)." 3 F. R. D. at 88.

[6] Prof. Moore asserts: "If the *court is satisfied* that a protective order is necessary, it will issue an order which governs the examination with respect to the matters within the scope of the order." [Emphasis supplied.]

ment, oppression or the like[7] are satisfied by the facts in this record.

Believing that there had been fair and ample opportunity to cross-examine the witness and to develop information relevant to the controversy, and considering the advanced age of the witness, the delicate state of her health and the probable adverse affect upon her health of further cross-examination, we conclude that it was clearly proper to terminate her cross-examination.

The order of February 23, 1956 (as amended by the order of March 15, 1956) will be affirmed.

Appeal No. 13,458

In the matter of the fee allowed Mr. Albrecht[8] we are unable to say that the District Judge abused his discretion. We are no more empowered to try the question of fee *de novo* or sit as a *nisi prius* court in that regard than in the case of the termination of the deposition. Our obligation is to determine whether the District Court abused its discretion and we cannot say that there was such abuse in this case.

Mrs. Stinnes argues that, as the cross-examination was for the benefit of Mr. Albrecht's clients, a part of his fee should be paid by them. The short answer to this is that the petition for perpetuation of testimony was instituted by Mrs. Stinnes. Appellees gave notice that they would oppose the petition and this position was abandoned only upon the signing of the consent order on July 11, 1955, by which Mrs. Stinnes agreed, among other things, to pay a

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[7] *Schwartz* v. *Broadcast Music, Inc.*, 16 F. R. D. 31 (S. D. N. Y. 1954); *Laverett* v. *Continental Briar Pipe Co.*, 25 F. Supp. 80 (E. D. N. Y. 1938).

[8] Although Mrs. Stinnes also appealed the allowance for expenses named by Mr. Albrecht, this part of her appeal has been abandoned.

reasonable attorney's fee to Mr. Albrecht in connection with the taking of petitioner's deposition and all reasonable expenses in connection therewith.

The order of April 30, 1956, will be affirmed.

Order of February 23, 1956 (as amended by order of March 15, 1956) is affirmed.

Order of April 30, 1956 is affirmed.

Federal Rules of Civil Procedure for the United States District Courts

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Rule 26. Depositions Pending Action

(a) When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Scope of Examination. Unless otherwise ordered by the court as provided by Rule 30(b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other

party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Examination and Cross-Examination.

* * *

(d) Use of Depositions.

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(e) Objections to Admissibility.

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(f) Effect of Taking or Using Depositions.

* * *

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the United States district court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he

expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so

taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a United States district court, in accordance with the provisions of Rule 26(d).

(b) Pending Appeal.

* * *

(c) Perpetuation by Action.

* * *

Rule 30. Depositions Upon Oral Examination.

* * *

(b) Orders for the Protection of Parties and Deponents. After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

* * *

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

Office - Supreme Court, U.S.
FILED
AUG 12 1957
JOHN T. FEY, Clerk

No. 279

In the Supreme Court of the United States

OCTOBER TERM, 1957

ELSA W. DE WAGENKNECHT AND N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ, PETITIONERS

v.

MRS. HUGO STINNES, SR., HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES AND ATLANTIC ASSETS CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
DALLAS S. TOWNSEND,
Assistant Attorney General,
GEORGE B. SEARLS,
IRWIN A. SEIBEL,
MARBETH A. MILLER,
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BRIEF FOR RESPONDENT HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, IN OPPOSITION

OPINIONS BELOW

The memorandum opinion and order of the District Court, filed February 23, 1956 (R. 136),[1] are unreported. The opinion of the Court of Appeals (R. 573) is reported at 243 F. 2d 413, and is set out in the appendix to the petition at p. 21.

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1957 (R. 583). The petition for a writ

[1] The order was modified on March 15, 1956, in respects not material here (R. 139).

of certiorari was filed on July 16, 1957. Jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether this Court should set aside as clearly erroneous the concurrent findings below that petitioners had a fair and ample opportunity to cross-examine respondent Stinnes and further cross-examination would be oppressive in the circumstances of this case.

2. Whether in the circumstances the termination of respondent Stinnes' deposition under Rule 30 (d), Federal Rules of Civil Procedure, was an abuse of discretion.

FEDERAL RULES INVOLVED

The pertinent provisions of Rules 26, 27, and 30, Federal Rules of Civil Procedure, are reprinted in the appendix to the petition at pp. 29–33.

STATEMENT

The proceedings were instituted in the District Court for the District of Columbia under Rule 27, F. R. C. P., by petition of respondent Stinnes, a citizen and resident of Germany, for an order authorizing perpetuation of her testimony by deposition on oral examination (R. 1). She claimed, as the widow and residuary legatee of Hugo Stinnes, Sr., to be the pre-vesting owner of all, or substantially all, of certain valuable property vested by the Attorney General under the Trading With the Enemy Act (40 Stat. 411, as amended, 50 U. S. C. App. 1, *et seq.*), against which property conflicting claims had been asserted by petitioners herein and by respondent Atlantic As-

sets Corporation (R. 1–2).[2] She conceded her own ineligibility under existing law to sue for the return of the vested property, but claimed that a bill was pending before the Congress under which, if enacted, she could and would bring suit to establish her claim of ownership against the Attorney General and the adverse claimants, all of whom were named as expected adverse parties in this proceeding (R. 2–5). Perpetuation of her testimony was sought on the issue of her ownership of the vested property because of her advanced age—then over 82—and frail health (R. 5).

The District Court on July 11, 1955, with the consent of all parties, authorized the taking of Mrs. Stinnes' deposition in Germany (R. 8–9). The first examination of Mrs. Stinnes began on August 30, 1955, and lasted for nineteen days. The sessions, because of her age and health, averaged two and a half hours per day (R. 84). The direct examination took three days and part of the fourth (R. 26). The Government's cross-examination began immediately after the direct, and was completed after one more daily session and part of another (R. 26). Cross-examination by petitioners' counsel occupied the remainder of the initial nineteen-day period—more than 13 days (R. 43).

Mrs. Stinnes' doctor, because of the adverse effect of the examination on her health, then had her enter a hospital for treatment (R. 45–46). At about the same time, she moved in the District Court under Rule

[2] There are now pending in the District Court for the District of Columbia four suits under § 9 (a) of the Trading With the Enemy Act by petitioners and others for the return of certain of the vested property (R. 76, 105).

30 (d), F. R. C. P., for an order terminating the examination forthwith or after such time as might appear reasonable to the court in the premises, upon the ground that the cross-examination by counsel for the petitioners was unreasonably oppressive (R. 14–15). The District Court on October 6, 1955, ordered, *inter alia*, that the deposition be resumed as soon as Mrs. Stinnes' health permitted, and that it be continued until completed or until found by her physician to be unduly prejudicial to her health (R. 48).

The deposition resumed in Mrs. Stinnes' hospital room where she was further cross-examined for two days by petitioners' counsel (R. 51, 84). On the second of these days, her doctor certified that because further questioning would endanger her life Mrs. Stinnes' examination should, at the maximum, continue for five additional days (R. 51, 71). Notwithstanding that in these circumstances the order of October 6, 1955, contemplated an equitable allocation among all attorneys of the time remaining for examination (R. 48), no such allocation was made and the remaining four days were used exclusively by petitioners' counsel in further cross-examination (R. 84). Mrs. Stinnes' physician then ordered the suspension of her testimony because of her health (R. 72, 84).

Upon Mrs. Stinnes' motion (R. 14–15), supported by the Government (R. 83–85), the District Court on February 23, 1956, entered an order directing that

[3] Part III of the petition (pp. 17–19) relates to some trivial errors made in that portion of the order of February 23, 1956, not involved here, which dealt with the payment of attorney fees. The order was resettled and modified on March 15, 1956 (R. 139–140), to correct these errors.

the deposition be terminated, holding, *inter alia* (Pet. App. 25, R. 137):

> * * * that the examining parties have had fair and ample opportunity to go into the matters in controversy despite difficult circumstances, and * * * that further cross-examination of petitioner would be oppressive * * *. If, as a consequence, the deposition is rendered incomplete, such fact may be called to the attention of the Court when it is offered in evidence, so that it may be evaluated properly.

The Court of Appeals affirmed, finding that there had been a clear showing of oppression and concluding (243 F. 2d at 418):

> Believing that there had been fair and ample opportunity to cross-examine the witness and to develop information relevant to the controversy, and considering the advanced age of the witness, the delicate state of her health and the probable adverse effect upon her health of further cross-examination, * * * it was clearly proper to terminate her cross-examination.

ARGUMENT

1. The questions presented are essentially fact questions. Petitioners do not dispute the correctness of the legal principles applied by the courts below, nor the propriety of the termination order on the basis of the facts as found. Their principal complaint is that the findings of "fair and ample opportunity" to cross-examine and of "oppression," findings concurred in by the court below, are erroneous. Manifestly, this fact question has no importance beyond the particular facts and parties involved, and accordingly

does not warrant review by this Court. See, *Southern Power Co.* v. *North Carolina Pub. Serv. Co.*, 263 U. S. 508, 509; *United States* v. *Johnston*, 268 U. S. 220, 227; *Comstock* v. *Group of Institutional Investors*, 335 U. S. 211, 214.

2. Termination of a deposition in accordance with Rule 30 (d), F. R. C. P.,[4] is in the sound discretion of the District Court (*United States ex rel. Edelstein* v. *Brussell Sewing Mach. Co.*, 3 F. R. D. 87 (S. D. N. Y.); *Walsh* v. *Pullman Co.*, 10 F. R. D. 77 (S. D. N. Y.)), the exercise of which will not be reversed except upon a showing of abuse of discretion. *Continental Bank Co.* v. *Chicago, R. I. & P. Ry. Co.*, 294 U. S. 648, 678; *Meccano, Ltd.* v. *Wanamaker*, 253 U. S. 136, 141; *Twachtman* v. *Connelly*, 106 F. 2d 501, 507 (C. A. 6).[5]

The termination order was entered after Mrs. Stinnes had been examined for 25 daily sessions, and her doctor had certified her inability to undergo further examination. The direct examination lasted only three and a fraction of these days, and the Government's cross-examination two days. In contrast, cross-examination by petitioners' counsel, which cov-

[4] Petitioners' suggestion (Footnote to Pet., p. 6) that Rule 30 (d) does not apply to perpetuation proceedings under Rule 27 is contrary to the plain language of the last two sentences of Rule 27 (a) (3) (Pet. App. 31) which specifically provide that "these rules"—the Federal Rules of Civil Procedure—apply to such proceedings.

[5] Though lip service is paid in the petition to these axiomatic principles, implicit throughout is the notion that the parties, rather than the court, control the conduct of the examination, for the whole thrust of the argument seems to be that a termination order entered in the course of an examination necessarily deprives the examining party of a fair and ample opportunity to develop his case, and therefore is an abuse of discretion.

ered all matters in dispute, continued for the last nineteen and a fraction days, during the last four of which counsel was on notice of the terminal date of the examination. In light of these facts, and the advanced age and frail health of the witness, the termination order was well within the permissible area of discretion given to the District Court. Indeed, these basic facts more than warranted the findings of the courts below that petitioners had a fair and ample opportunity to cross-examine and that to continue the examination under the circumstances would have been oppressive.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957

Office - Supreme Court, U.S.
FILED
AUG 20 1957
JOHN T. FEY, Clerk

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v.

MRS. HUGO STINNES, SR., HERBERT BROWNELL, JR., Attorney General of the United States, and ATLANTIC ASSETS CORPORATION, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT MRS. HUGO STINNES, SR. IN OPPOSITION

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ELSA W. DE WAGENKNECHT and N. V. EDMUND WAGENKNECHT'S HANDEL MAATSCHAPPIJ, *Petitioners*,

v.

MRS. HUGO STINNES, SR., HERBERT BROWNELL, JR., Attorney General of the United States, and ATLANTIC ASSETS CORPORATION, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT MRS. HUGO STINNES, SR., IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is contained in its unreported Memorandum and Order filed February 23, 1956 (R. 136-138). The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 243 F. 2d 413, and is set out in the petition at pp. 21-29.

JURISDICTION

The basis for the jurisdiction of this Court is adequately stated in the petition.

QUESTION PRESENTED

This petition concerns a District Court order terminating the taking of a deposition. On appeal, the Court of Appeals concluded that "there was no abuse of discretion when the trial court granted the motion terminating the witness' deposition", and that "those cases which require a movant under Rule 30(d) to make a clear showing of annoyance, embarrassment, oppression or the like are satisfied by the facts in this record". Moreover the Court of Appeals added, after a summary of the factors in the case, that "it was clearly proper to terminate her cross-examination". The question presented is whether, on the particular facts, the Court of Appeals correctly concluded that there was no abuse of discretion in the District Court's termination order.

FEDERAL RULES INVOLVED

Rules 26, 27 and 30, Federal Rules of Civil Procedure, are set forth at pp. 29-33 of the petition.

STATEMENT

Mrs. Stimmes, a woman 82 years of age and in frail health, sought to perpetuate her own testimony, [illegible] respect to her pre-vesting ownership of certain property seized by the United States Government under the Trading with the Enemy Act, by means of an oral deposition before action, pursuant to the provisions of Rule 27(a), F.R.C.P. Her petition was granted on July 11, 1955, with the consent of all parties (R. 8).

Because of her age and infirmity,* Mrs. Stimmes' deposition was taken in Germany in sessions lasting some two and one-half hours per day. There were twenty-five such daily sessions between August 30 and October 16, 1955. Direct examination required three of these sessions and part of a fourth, and the Government's cross-examination required one of these sessions and parts of two others. The remaining nineteen-plus sessions were used by counsel for the petitioners herein. To express the matter differently, direct examination filled sixty-three pages of the transcript, the Government's cross-examination twenty-seven more, and petitioners' cross-examination covered two hundred sixty-five pages of transcript.

The termination of Mrs. Stimmes' deposition came about in two stages, as follows:

(1) As the cross-examination continued it became increasingly clear that Mrs. Stimmes' health was deteriorating (R. 394) and that counsel for the petitioners herein nevertheless proposed to continue examining her indefinitely (R. 394, 419, 420). Petitioners' counsel was cross-examining Mrs. Stimmes at Mrs. Stimmes' expense, pursuant to the provisions of the consent order of July 11, 1955. And, on September 21, 1955, petitioners' counsel filed a motion for additional security for the payment of his fees and expenses which indicated that he expected to continue the cross-examination for at least another month (R. 13). Accordingly, on September 26, 1955, Mrs. Stimmes' counsel moved under Rule 30(d) of the Federal

* In addition to "serious heart and circulation trouble", Mrs. Stimmes had been a chronic sufferer from duodenal and gastric ulcers for many years (R. 44, 45).

Rules of Civil Procedure for an order terminating her deposition upon the ground that her cross-examination was being conducted in such a manner as unreasonably to oppress her. The following day, after cross-examination by petitioners' counsel had continued for thirteen sessions and part of another, Mrs. Stinnes' doctor advised her to suspend testifying because of the adverse effect which the examination was having upon her health, and to return to the University Hospital in Hamburg, where she had previously been treated, for an examination by Dr. H. H. Berg, an ulcer specialist of world renown who had treated Mrs. Stinnes for some twenty-five years (R. 43, 44, 45).

At the hearing on the motion to terminate, Mrs. Stinnes' counsel presented a certificate of Dr. Berg stating that continued examination of Mrs. Stinnes would be "dangerous for health and life" and that the deposition should therefore be terminated as promptly as possible. The certificate also stated that continuance under medical supervision for a few short sessions would be preferable to postponing the examination to some time in the future because the knowledge that the deposition might be resumed would handicap treatment of the ulcers (R. 45, 46). Thereupon Judge Youngdahl ordered that the deposition be resumed at the hospital in Hamburg as soon as Mrs. Stinnes' health permitted and that it should continue until completed or until in the written opinion of Mrs. Stinnes' doctor its continuance would be unduly prejudicial to her health (R. 47-49). The order also directed that if Mrs. Stinnes' physican advised that the deposition could be continued only for a specified number of sessions, counsel for all parties should "undertake to reach an agreement effecting an equitable allocation

among them of the time so specified by petitioner's [Mrs. Stimmes'] physican, for her examination by each of them:" (R. 48).

Pursuant to Judge Youngdahl's order the deposition was resumed in Hamburg, Germany, at Mrs. Stimmes' bedside in the University Hospital on October 11, 1955 (R. 51, 506, 507). Dr. Berg attended the first session and gave it as his opinion that the deposition could not continue beyond five additional sessions without being unduly prejudicial to Mrs. Stimmes' health (R. 70, 71, 522). Thereafter Mrs. Stimmes' counsel suggested that an attempt be made to allocate the remaining time along the lines envisaged by Judge Youngdahl's order (R. 52, 522). Petitioners' counsel refused to agree to any allocation of time, however, and continued his cross-examination for all the remaining sessions (R. 54, 522, 523, 524). On October 16, 1955, after six sessions at Mrs. Stimmes' bedside during which petitioners' counsel had largely repeated earlier questioning, Dr. Berg ordered the examination stopped, certifying that in his opinion continuance would be unduly prejudicial to appellee's health (R. 72).

(2) Thereafter the motion for termination was recalendared, and after hearing the Court entered its further order on February 23, 1956, reading in pertinent part as follows:

> "The records and brief in this case have been examined with care. At the outset it should be noted that this court has already allowed oral examination of petitioner, who is over eighty-two years of age, to be resumed once on the understanding that it be discontinued when found by her physicen to be unduly prejudicial to her

health.[1] On October 12, 1955 her physican found that 'the questioning is detrimental to the patient's health, and if continued for too long a time, the stress caused by it could result in an urgent complication of the ulcer (perforation or hemorrhage).' Believing that the examining parties have had fair and ample opportunity to go into the matters in controversy despite difficult circumstances, and being of the opinion that further cross-examination of petitioner would be oppressive, the deposition will be terminated by the Court. If, as a consequence, the deposition is rendered incomplete, such fact may be called to the attention of the Court when it is offered in evidence, so that it may be evaluated properly.

"[1] The order of this Court, dated October 6, 1955, reads in pertinent part: 'ORDERED that: (2) The taking of the deposition of the petitioner upon oral examination be resumed at the Universitats-Krankenhaus Eppendorf, Hamburg, Federal Republic of Germany, as promptly after the entry of this Order as arrangements can be made therefore and petitioner's health permits, and shall continue there to be taken until counsel shall complete the same or until to continue to take the same would, in the written opinion of petitioner's physician be unduly prejudicial to the health of petitioner, whichever occurs first.'"

On appeal the Court of Appeals affirmed, holding that the District Court did not abuse its discretion in entering the termination order, that the requirements of Rule 30(d), F.R.C.P., for a showing of unreasonable annoyance, embarrassment or oppression were satisfied, that there had been fair and ample opportunity to cross-examine the witness, and in fact that the termination was "clearly proper".

REASONS FOR DENYING THE WRIT

The petition misconceives the nature and purpose of this Court's certiorari jurisdiction, in that it seeks to

have this Court exercise a *nisi prius* function. It makes no attempt to show that the decision below raises questions of general or public interest, but instead recites numerous points on which petitioners feel they have not examined Mrs. Stimmes sufficiently and in effect asks this Court to consider *de novo* whether, in the circumstances, it would have issued the termination order.*

Regardless of the adequacy of the petition, the case is in any event not an appropriate one for review by writ of certiorari because it involves no conflict or question of law which is of general or public interest. The petition's concession that termination of a deposition is within the discretion of the trial court (pp. 2-3), and its lengthy recital, unintelligible without reference to the complete deposition, of matters as to which petitioners desire further examination, convincingly show that this is essentially a fact case, of interest only to the immediate parties.**

---

* The petition is cast, not in terms of a review of the Court of Appeals decision, but rather in terms of a direct re-review of the District Court decision. *Cf. Magnum Co.* v. *Coty*, 262 U.S. 159, 163 (1923): "The [certiorari] jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing".

** The petition hints (pp. 16-17) that termination of a deposition taken to perpetuate testimony presents a peculiar problem because the issues are unknown. This suggestion will not withstand a reading of Rule 27(a)(1), which requires that the petition disclose the subject matter of the expected action, the petitioner's interest therein, and the substance of the testimony expected to be elicited. The petition also suggests (pp. 3, 5) that the District Court abused its discretion by failing to postpone action on the motion to terminate. This completely ignores the finding, concurred in by both lower courts, that there had already been fair and ample opportunity to cross-examine, and in any event will not withstand a reading of Rule 30(d).

Moreover, the decisions below were clearly correct. Termination of a deposition is in the sound discretion of the District Court, *United States ex rel. Edelstein v. Brassell Sewing Mach. Co.*, 3 F.R.D. 87 (S.D.N.Y. 1943); *Walsh v. Pullman Co.*, 10 F.R.D. 77 (S.D.N.Y. 1948); *cf. East Bay Municipal Utility Dist. v. Kieffer*, 279 P. 178, 99 Cal. App. 240 (1929); *People v. Hightower*, 224 P. 110, 65 Cal. App. 331 (1924), and an abuse of discretion must be shown to warrant reversal. *Continental Bank Co. v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 678 (1935); *Mecano, Ltd. v. Wanamaker*, 253 U.S. 136, 141 (1920); *Twachtman v. Connelly*, 106 F. 2d 501, 507 (6th Cir. 1939); *cf. East Bay Municipal Utility Dist. v. Kieffer, supra; Barnes v. Squier*, 193 Mass. 121, 78 N.E. 731 (1906); *People v. Becker*, 210 N.Y. 274, 104 N.E. 396 (1914); *Sturm v. Sturm*, 163 Atl. 5, 111 N.J. Eq. 579 (1932). The District Court based its termination order on twin findings that there had been fair and ample opportunity to examine and that further cross-examination would be oppressive. The Court of Appeals affirmed on both grounds. On the bare facts as to Mrs. Stimmes' health (e.g., the need to hospitalize her) and the duration of the examination (25 sessions, 4/5ths of them used by petitioners herein for cross-examination), the decisions of both courts can hardly be termed abusive of their discretion. The petition purports to recognize that it must make a showing of abuse of discretion. To this end it devotes itself to the single proposition that fair and ample opportunity to question was not had, completely ignoring the District Court's finding of oppression, confirmed by the Court of Appeals. Its theory appears to be that any order terminating a deposition taken to perpetuate testimony, over the objection of the examin-

ing party, must necessarily be an abuse of discretion because (1) Rule 30(d) does not apply to a perpetuation and therefore "oppressive" conduct is no ground for termination, and (2) only the parties can determine when fair and ample opportunity to question has been had. But the assertion (p. 6) that Rule 30(d) does not apply to a proceeding under Rule 27 flies in the face of the express language of Rule 27 (a)(3), which provides that depositions to perpetuate testimony are to be "taken in accordance with *these* rules". And the Court's power to determine when ample opportunity for examination has been had, where the parties cannot agree, would seem to be self-evident.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: August, 1957.